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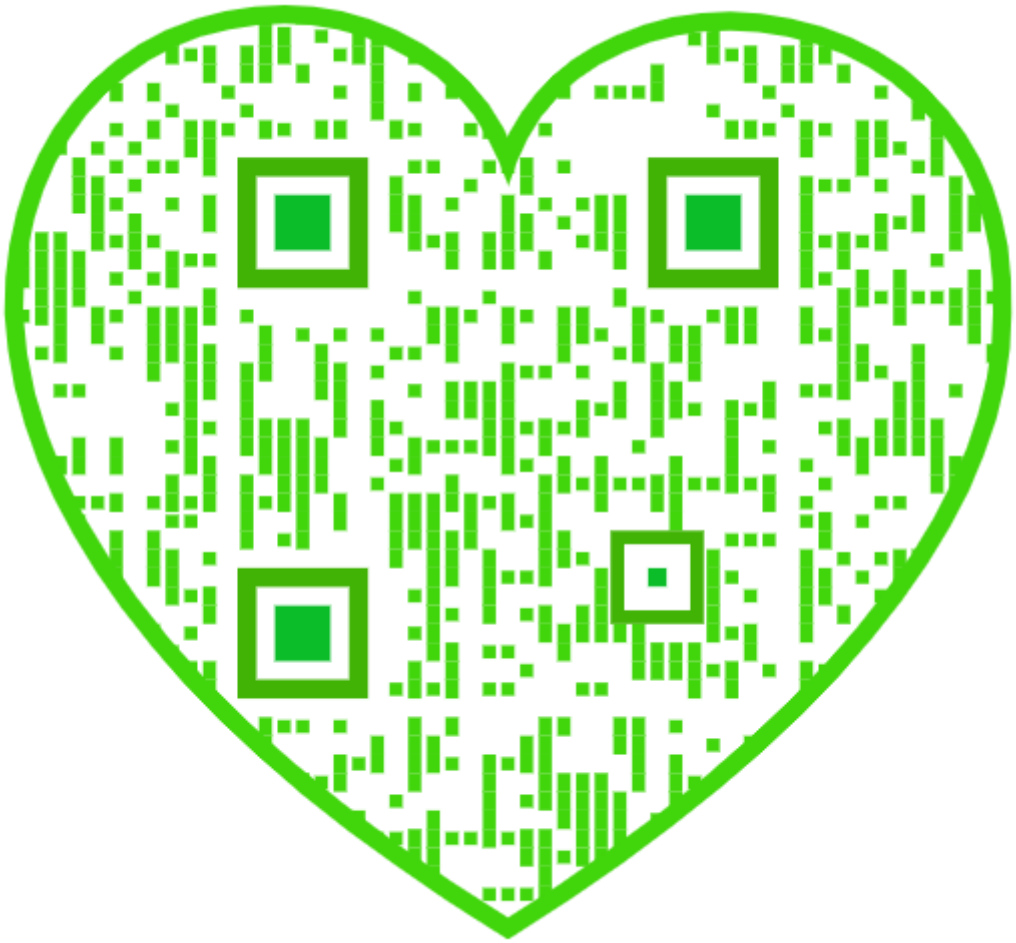

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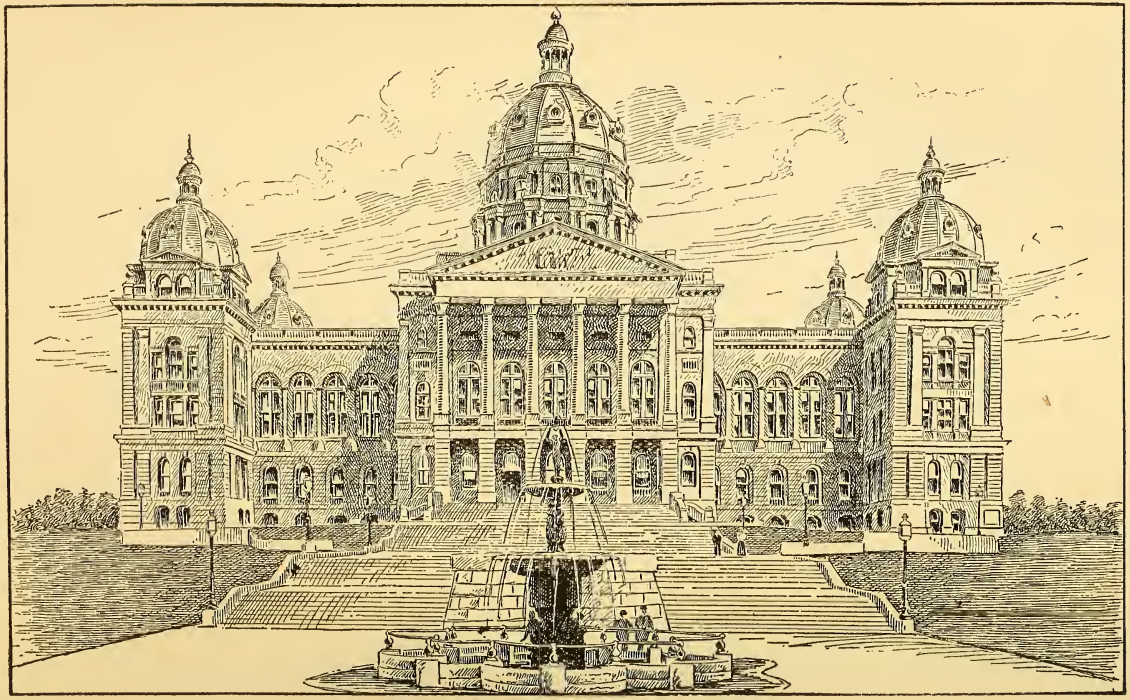
THE

STATE GOVERNMENT SERIES

EDITED BY

B. A. HINSDALE, Ph.D., LL.D.

VOLUME IV.



STATE CAPITOL.

HISTORY

AND

Civil Government of Iowa

BY

H. H. SEERLEY, A.M.,
PRESIDENT OF THE IOWA STATE NORMAL SCHOOL.

AND

L. W. PARISH, A.M.,
PROFESSOR OF POLITICAL SCIENCE IN THE IOWA STATE NORMAL SCHOOL.

AND

THE GOVERNMENT OF THE UNITED STATES

BY

B. A. HINSDALE, Ph.D., LL.D.

NEW YORK -:- CINCINNATI -:- CHICAGO
AMERICAN BOOK COMPANY

THE STATE GOVERNMENT SERIES

UNDER THE GENERAL EDITORSHIP OF

B. A. HINSDALE, Ph.D., LL.D.

Professor of the Science and the Art of Teaching in the University of Michigan; Author of "The American Government," "Studies in Education," etc.

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PREFACE.

The recent revision of the Code of Iowa has caused somewhat important changes in the government of cities and in some of the State departments. These changes we have tried to make clear to the pupil, and we hope that the comparative tables and numerous outlines may prove helpful in fixing the information given in the text.

Our book has grown out of the conviction that history and civics are correlative studies; that the story of civic development constitutes civil history; and that the civil government of to-day is most interesting and most profitable when viewed in the light of those events by which the organization of the State is being moulded and perfected.

While we have given considerable space to the history of Iowa, we have confined ourselves strictly to *civil* history, and have tried, by numerous cross-references, to emphasize the fact that present civic conditions are the result of past experiences and not infrequently of past prejudices.

Hoping that this method of study may help in adding to American patriotism a much needed intelligence,

and that, as as a consequence, at least the *blunders* of history may show less tendency to repeat themselves, we offer our little book not only to the teachers of Iowa, but to all who are interested in the past and present of our beloved State.

H. H. Seerley,
L. W. Parish.

State Normal School,
Cedar Falls, Iowa.

CONTENTS

		Page.
	General Introduction	9-26
	Part I.—History.	
Chapter.		
I.	The Beginnings of Government (1673-1838)	27-35
II.	The Original Inhabitants	36-43
III.	Iowa Territory (1838-1840)	44-54
IV.	Steps to Statehood	55-62
V.	The Democratic Period of State Control (1846-1854)	63-73
VI.	The Transition Period in Organization and Legislation (1854-1857)	74-81
VII.	The Republican Period of State Control (1857-)	82-92
VIII.	Iowa in the Days of Controversy and War (1859-1865)	93-104
IX.	The State Institutions and Societies	105-118
X.	Growth, Development, and Change	119-135
	Part II.—Civil Government.	
XI.	Local Government	136-144
XII.	Township Government	145-158
XIII.	Municipalities	159-165
XIV.	County Government	166-178
XV.	State Government	179-193
XVI.	Right of Suffrage	194-203

Chapter.		Page.
XVII.	Legislative Department	204-215
XVIII.	Legislative Department (*Continued*)	216-228
XIX.	Executive Department.....	229-242
XX.	Judicial Department.....	243-258
XXI.	State Debts and Corporations.	259-266
XXII.	Education and School Lands..	267-280

Part III.—Government of the United States.

XXIII.	The Making of the Government.	281-289
XXIV.	Amendments Made to the Constitution	290-292
XXV.	The Source and Nature of the Government.....	293-295
XXVI.	The Composition of Congress and the Election of its Members.	296-308
XXVII.	Organization of Congress and its Methods of Doing Business	309-315
XXVIII.	Impeachment of Civil Officers..	316-319
XXIX.	General Powers of Congress..	320-332
XXX.	Election of the President and the Vice-President.....	333-338
XXXI.	The President's Qualifications, Term, and Removal.....	339-341
XXXII.	The President's Powers and Duties	342-350
XXXIII.	The Executive Departments....	351-355
XXXIV.	The Judicial Department.....	356-363
XXXV.	New States and the Territorial System.....	364-369
XXXVI.	Relations of the States and the Union.....	370-377
	Special Review and Outline...	378-384

GENERAL INTRODUCTION.

The character of the volumes that will comprise The State Government Series is indicated by the name of the series itself. More definitely, they will combine two important subjects of education, History and Government. It is proposed in this Introduction briefly to set forth the educational character and value of these subjects, and to offer some hints as to the way in which they should be studied and taught, particularly as limited by the character of the Series.

1. The Educational Value of the Study of History and Government.

Not much reflection is required to show that both of these subjects have large practical or guidance value, and that they also rank high as disciplinary studies.

1. *History.*—When it is said that men need the experience of past ages to widen the field of their personal observation, to correct their narrow views and mistaken opinions, to furnish them high ideals, and to give them inspiration or motive force; and that history is the main channel through which this valuable experience is transmitted to them—this should be sufficient to show that history is a very important subject of education. On this point the most competent men of both ancient and modern times have delivered the most convincing testimony. Cicero called history "the witness of times, the light of truth, and the mistress of life." Dionysius of Halicarnassus said "history is philosophy teaching by

examples," and Lord Bolingbroke lent his sanction to the saying. Milton thought children should be taught "the beginning, the end, and the reasons of political societies." Another writer affirms that "history furnishes the best training in patriotism, and enlarges the sympathies and interests." Macaulay said: "The real use of traveling to distant countries, and of studying the annals of past times, is to preserve them from the contraction of mind which those can hardly escape whose whole commerce is with one generation and one neighborhood."

In every great field of human activity the lessons of history are invaluable—in politics, religion, education, moral reform, war, scientific investigation, invention, and practical business affairs. The relations of history and politics are peculiarly close. There could be no science of politics without history, and practical politics could hardly be carried on. But, more than this, there can be no better safeguard than the lessons of history against the specious but dangerous ideas and schemes in relation to social subjects that float in the atmosphere of all progressive countries. In fact, there is no other safeguard that is so good as these lessons; they are experience teaching by examples. The man who has studied the history of the Mississippi Scheme, the South Sea Bubble, or some of the less celebrated industrial or economical manias that have afflicted our own country, is little likely to embark in similar schemes himself, or to promote them. The man who has studied the evils that irredeemable paper money caused in France in the days of the Revolution, or the evils that the Continental money caused in our own country, will be more apt to form sound views on the subjects of currency and banking than the man who has had no such training. The

school of history is a conservative school, and its lessons are our great defense against cranks, faddists, and demagogues.

2. *Government.*—Politics is both a science and an art. It is the science and the art of government. As a science it investigates the facts and principles of government; as an art it deals with the practical applications of these facts and principles to the government of the state.

Now it is manifest that the art of politics, or practical government, directly concerns everybody. Few indeed are the subjects in which men, and particularly men living in great and progressive societies, are so deeply interested as in good government. The government of the state is charged with maintaining public order, securing justice between man and man, and the promotion of the great positive ends of society. For these purposes it collects and expends great revenues, which are ultimately paid from the proceeds of the labor of the people. Furthermore, in republican states, such as the American Union and the forty-six individual States that make up the Union, government is carried on by the people through their representatives chosen at popular elections. The voters of the United States are a great and growing body. Educational and other restrictions sometimes reduce the number of voters in a State, but this effect is more than counterbalanced by the increase in population in the nation at large. About 14,000,000 citizens vote in a presidential election. They vote also for National representatives, for State legislatures, executives, and judges, for county, township, and city officers, for the supervisors of the roads and the directors of the public schools. There is not a point in the whole round of National, State, and Local government that the popular will, as expressed at elections,

does not touch. Every man is, therefore, directly concerned to understand the nature and operations of these governments, and almost equally concerned to have his neighbors also understand them.

We have been dealing with practical politics exclusively. But the art of government depends upon the science of government. The government of a great country like our own, at least if a good one, is a complicated and delicate machine. Such a government is one of the greatest triumphs of the human mind. It is the result of a long process of political experience, and in its elements at least it runs far back into past history. It is, therefore, a most interesting study considered in itself. All this is peculiarly true of our own government, as will be explained hereafter.

However, this complicated and delicate machine is not an end, but only a means or instrument; as a means or instrument it is ordained, as the Declaration of Independence says, to secure to those living under it their rights—such as life, liberty, and the pursuit of happiness; and the extent to which it secures these rights is at once the measure of its character, whether good or bad.

It is also to be observed that a government which is good for one people is not of necessity good for another people. We Americans would not tolerate a government like that of Russia, while Russians could hardly carry on our government a single year. A good government must first recognize the general facts of human nature, then the special character, needs, habits, and traditions of the people for whom it exists. It roots in the national life and history. It grows out of the national culture. Since government is based on the facts of human nature and human society, it is not a mere crea-

ture of accident, chance, or management. In other words, there is such a thing as the science of government or politics. Moreover, to effect and to maintain a good working adjustment between government and a progressive society, is at once an important and difficult matter. This is the work of the practical statesman. And thus we are brought back again to the fact that the science of government is one of the most useful of studies.

Mention has been made of rights, and of the duty of government to maintain them. But rights always imply duties. For example: A may have a right to money that is now in B's posssession, but A cannot enjoy this right unless B performs the duty of paying the money over to him. If no duties are performed, no rights will be enjoyed. Again, the possession of rights imposes duties upon him who possesses them. For example: The individual owes duties to the society or the government that protects him in the enjoyment of his rights. Rights and duties cannot be separated. Either implies the other. Accordingly, the practical study of government should include, not only rights, but also duties as well. The future citizen should learn both lessons; for the man who is unwilling to do his duty has no moral claim upon others to do theirs.

The foregoing remarks are particularly pertinent to a republican government, because under such a government the citizen's measure of rights, and so of duties, is the largest. Here we must observe the important distinction between civil and political rights. The first relate to civil society, the second to civil government. Life, liberty of person, freedom of movement, ownership of property, use of the highways and public institutions, are civil rights. The suffrage, the right to hold

office under the government, and general participation in public affairs are political rights. These two classes of rights do not necessarily exist together; civil rights are sometimes secured where men do not vote, while men sometimes vote where civil rights are not secured; moreover, both kinds of rights may be forfeited by the citizen through his own bad conduct. Evidently political rights are subordinate to civil rights. Men participate in govermental affairs as a means of securing the great ends for which civil society exists. But the great point is this—republican government can be carried on successfully only when the mass of the citizens make their power felt in political affairs; in other words, perform their political duties. To vote in the interest of good government, is an important political duty that the citizen owes to the state. Still other political duties are to give the legally constituted authorities one's moral support, and to serve the body politic when called upon to do so. These duties grow out of the corresponding rights, and to teach them is an essential part of sound education.

It has been remarked that good government rests upon the facts of human nature and society, that such a government is a complicated machine, and that it is an interesting subject of study. It is also to be observed that the successful operation of such a government calls for high intellectual and moral qualities, first on the part of statesmen and public men, and secondly on the part of the citizens themselves. There are examples of an ignorant and corrupt people enjoying measurable prosperity under a wise and good monarch; but there is no example of a democratic or republican state long prospering unless there is a good standard of intelligence and virtue. This is one of the lessons that Washington

impressed in his Farewell Address: "In proportion as the structure of a government gives force to public opinion, it is essential that public opinion shall be intelligent."

Government deals with man in his general or social relations. Robinson Crusoe living on his island neither had, nor could have had, a government. Man is born for society; or, as Aristotle said, "man has a social instinct implanted in him by nature." Again, man is political as well as social; or, as Aristotle says, "man is more of a political animal than bees, or any other gregarious animal." Hence the same writer's famous maxim, "Man is born to be a citizen."

These last remarks bring before the mind, as a subject of study, man in his relations to his fellow men. The study of man in these relations has both practical and disciplinary value. At first man is thoroughly individual and egotistical. The human baby is as selfish as the cub of the bear or of the fox. There is no more exacting tyrant in the world. No matter at what cost, his wants must be supplied. Such is his primary nature. But this selfish creature is endowed with a higher, an ideal nature. At first he knows only rights, and these he greatly magnifies; but progressively he learns, what no mere animal can learn, to curb his appetites, desires, and feelings, and to regard the rights, interests, and feelings of others. To promote this process, as we have already explained, government exists. In other words, the human being is capable of learning his relations to the great social body of which he is a member. Mere individualism, mere egotism, is compelled to recognize the force and value of altruistic conviction and sentiment. And this lesson, save alone his relations to the Supreme Being, is the greatest lesson

that man ever learns. The whole field of social relations, which is covered in a general way by Sociology, is cultivated by several sciences, as ethics, political economy, and politics; but of these studies politics or government is the only one that can be introduced in didactic form into the common schools with much success. In these schools civil government should be so taught as to make it also a school of self-government.

It may be said that so much history and politics as is found in these volumes, or so much as can be taught in the public schools, does not go far enough to give to these studies in large measure the advantages that have been enumerated. There would be much force in this objection, provided such studies were to stop with the elementary school. But fortunately this is not the case. The history and the politics that are taught in the elementary school prepare the way for the history and the politics that are taught in the college and the university. Furthermore, and this is in one aspect of the subject still more important, they also prepare the way for much fruitful private study and reading in the home.

II. Methods of Study and Teaching.

Under this head history will be considered only so far as it is involved in politics. Our first question is, Where shall the study of government begin? The answer will be deferred until we have considered the general features of the government under which we live.

The United States are a federal state, and the American government is a dual government. Our present National Government dates from the year 1789. It was created by the Constitution, which, in that year, took the place of the Articles of Confederation. At that time the State governments were in full operation, and it was

not the intention of the framers of the Constitution, or of the people who ratified it, to supersede those governments, or, within their proper sphere, to weaken them. Experience had conclusively shown that the country needed a stronger National Government, and this the people undertook to provide. So they undertook to accomplish in the Constitution the objects that are enumerated in the Preamble.

"We, the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America."

The Constitution also formally denied some powers to the United States and some to the States; that is, it forbade the one or the other to exercise the powers so prohibited. (See Article I, sections 9, 10.) The understanding was that the mass of powers not delegated to the Union exclusively, or forbidden to the States, continued to remain in the hands of the people in their State capacities. Moreover, this understanding was expressly asserted in Article X of the Amendments.

Accordingly, the Government of the United States must be studied under two aspects, one National and one State. The case is quite different from what it would be in England or France, both of which countries have single or unitary governments. This duality makes the study more interesting, but more difficult, and suggests the question whether it should begin with the Nation or the State. The answer must be deferred until still other facts have been taken into account.

The powers that the State Governments exercise are exercised through a variety of channels. (1.) Some are exercised directly by State officers. For the most part these are powers that concern the State as a whole. (2.) Some are exercised by county officers within the county. (3.) Some are exercised by town or township officers within the town or county. (4.) Some are exercised by city or municipal officers within the city. (5.) A few fall to officers elected by divisions of townships, as road-masters and school directors.

Items 2, 3, 4 and 5 of this enumeration constitute Local government, which the people of all the States, in some form, have retained in their own hand. Here we meet a political fact that distinguishes us from some other countries, the vigorous vitality of local institutions. France, for example, although a republic, has a centralized government; many powers are there exercised by national officers that here are exercised by local officers, while there the state often asserts direct control over the local authorities. Strong attachment to local self-government, and opposition to centralized government, is one of the boasted glories of the English-speaking race. Subject to the State constitution, the State Legislature is the great source of political power within the State. The county, the township, and the city owe their political existence and peculiar organization to the Legislature.

Different States have organized local government in different ways. Speaking generally, there are three types—the Town type, the County type, and the Mixed type. The Town type is found exclusively in the New England States. It throws most of the powers of local government into the hands of the town, few into the hands of the county. The County type, which is found

in the Southern States and in a few others, reverses this method; it throws all local powers into the hands of the county, and makes the sub-divisions of the county merely an election precinct, the jurisdiction of the justice of the peace, and perhaps the unit of the militia company. The Mixed, or Compromise system, as its name implies, combines features of the other two. It makes more use of the county, and less of the town, than New England; more of the township, and less of the county, than the South. It is found in the Central States and generally, but not universally, throughout the West.

Now not much argument is needed to show that the study of government, even within the limits of the elementary school, should embrace the two spheres in which the American Government moves, the sphere of the Nation and the sphere of the State. Neither is much argument called for to show that the study of the State should embrace Local government, as well as State government proper. The argument on the whole subject divides into two main branches—the one practical, the other pedagogical.

Unfortunately, the time given to the study of government in the schools has not always been wisely distributed. For many years the National Government received disproportionate attention, and such, though perhaps in less degree, is still the case. But, important as the powers of the Nation are, the common citizen, in time of peace, has few relations with it outside of the Post Office Department, while his relations with the State are numerous and constant. President Garfield, in 1871, said: "It will not be denied that the State government touches the citizen and his interests twenty times where the National Government touches him once."

Still another point may be urged. An American State is a distinct political community. It is a separate commonwealth having its own constitution, laws, and officers. It has its own history. The people boast its services to the country. They point to its great names. They glorify the associations that cluster about its name. They dwell upon its typical or ideal life. All this is educative in a striking sense; such an environment necessarily reacts upon the people. Who can measure the effect of the old Bay State ideal, or the Old Dominion ideal, upon the people of either State?

Once more, Local government has received too little attention as compared with State government proper. Township or county government is on such a diminutive scale that to many it seems a subject unworthy of serious study. But it is important to teach the youth of the county that their future prosperity and happiness, as a rule, will depend upon what is done by road-masters, school directors, township trustees or supervisors, county commissioners or county courts, city authorities, and the like, far more than upon what is done by the Governor or the President. The common citizen is tenfold more concerned in the proceedings in the courts held by justices of the peace and by county judges than in the causes that are decided by the Supreme Court of the United States.

Government is fundamentally an information or guidance study. It is put in the schools to teach the pupil how to perform his political duties intelligently when he comes to the state of manhood. In order that he may perform these duties intelligently, he must understand the nature and the ends of government, whether National, State, or Local, and the mode of its operation.

The fact is, however, that characteristic features of our government are ill understood by thousands of our citizens. The functions of the Executive and of the Judiciary are often confounded; likewise the functions of State authorities and National authorities. A multitude of citizens participate in every election of electors for President, who do not know how the President is elected. The line dividing the State sphere from the National sphere is a very hazy matter to many persons who consider themselves intelligent. Owing partly to this fact, and partly to the greater prominence of the Union, there is always a tendency in many quarters to hold the National authorities responsible for what the State authorities have or have not done. The adjustment of Local Government to the State and National Governments is another matter concerning which many are confused. Tax-payers can be found in every neighborhood who think the taxes that they pay to the township or the county treasurer go to Washington.

What has been said will suffice for the practical branch of the argument. Taking up the pedagogical branch, let us first observe the nature and the origin of the child's early education in respect to government.

It is in the family, in personal contact with its members, that the child forms the habits of obedience and deference to others. It is here that he learns, in a rudimentary and experimental way, that he is part of a social whole. Here he acquires the ideas to which we give the names *obedience*, *authority*, *government*, and the like. His father (if we may unify the family government) is his first ruler, and the father's word his first law. Legislative, executive, and judicial functions are centered in a single person. These early habits and ideas are the foundations of the child's whole future education in government, both practical and theoretical.

His future conception of the governor, president, king, or emperor is developed on the basis of the idea of his father; his conception of society, on the basis of the idea of his home; his conception of government by the State, on the basis of family government. Of course these early habits and ideas are expanded, strengthened, and adjusted to new centers.

While still young, the child goes to school. This, on the governmental side, is but a repetition of the home. It is the doctrine of the law that the teacher takes the place of the parent: *in loco parentis*. The new jurisdiction may be narrower than the old one, but it is of the same kind. The education of the school reinforces the education of the home in respect to this all-important subject. The habits of obedience and deference are strengthened. The child's social world is enlarged. At first he thought, or rather felt, that he was alone in the world; then he learned that he must adjust himself to the family circle; now he discovers that he is a member of a still larger community, and that he must conduct himself accordingly. The ideas of authority, obedience, law, etc., are expanded and clarified.

About the time that the child goes to school he begins to take lessons in civil government. This also is developed on the basis of his previous home-training. It begins at the very door-step. The letter-carrier, the policeman, the justice of the peace, and the postmaster introduce him to the government of the outer world. Some or all of these officers he sees and knows, and others he hears about. The very mail wagon that rattles along the street teaches its lesson, and so do other symbols of authority that confront him. He attends an election and hears about the caucus. As he grows older, the town council, the court of the local magistrate, and the constable or sheriff teach him the

meaning of the three great branches of government. His ears as well as his eyes are open. Politics is the theme of much familiar conversation to which he listens. With all the rest, he reads the newspaper, and so enlarges his store of political information.

Still other agencies contribute to the grand result. The church, public meetings, societies of various kinds, all teach the lessons of order and discipline.

Such, in general, are the steps by which the child makes his way out of the world of isolation and selfishness into the world of social activity and light. Such is the character of his early education in morals and politics. Nor is it easy to overestimate these early lessons. To suppose that the child's political education begins when he first reads the Constitution of the United States, is like supposing that his moral education begins when he is first able to follow the preacher's sermon.

All this training is unconscious and mainly incidental, and the more effective for that very reason. But such training will not meet the ends of intelligent citizenship. Nor can the political education of citizens be left to the newspaper and the political speaker. Government must be formally taught in the schools. But what shall be the order of study? Shall the child begin at Washington, at the State capital, or at his own home? In other words, shall he begin with the National Government, with the State government proper, or with Local government?

For a time the student of government should continue to work on the material that lies right about him, just as the student of geography should find his first lessons at home. On this point the arguments already presented are decisive. The practical argument shows that this will be the most useful course to pursue. The pedagogical argument shows that it is also the easiest, the

most natural, and the most successful. In general then the method should be—first, the Local Government; second, the State Government, and last, the National Government.

We have now reached a point where we can define more clearly and fully the special object of the series of books to which this is a general introduction. These books are designed for the first stage of the formal study of the subject of Government. They are written on the theory announced; viz.: That the child's political education begins at home, and should for a time proceed from the home outward. The series is appropriately named The State Government Series. A volume will be given to a State. The successive volumes will first present an outline sketch of the civil history of the State, and then outline sketches of the State and National Governments as they now exist and operate.

With two or three practical suggestions to teachers, this Introduction may fitly close.

The first of these suggestions is that if the proper course be taken, the study of the National system will not be deferred until the pupil has made a complete survey of the State System. The State system can no more be understood alone than the National system alone. When the intelligent pupil, and particularly a boy, is old enough to take up one of the volumes of this series, he will already have made some progress in discriminating the two systems. He will know that Congress and the President belong to the Nation, the Legislature and the Governor to the State. But at the outset it may be advisable for the teacher to broaden and deepen this line of division. This can be done, if need be, in one or more oral lessons devoted especially to the subject. Moreover, the teacher should keep an eye on this line from first to last. He should encourage the pupil to read the

Constitution of the United States, and in particular should direct his attention to the general powers of Congress as summed up in Article I, section 8, which are the driving wheels of the National Government.

The second observation is that unremitting care must be taken to make the instruction real. The commonplaces about the abstractness and dryness of verbal instruction, and particularly book instruction, will not be dwelt upon, except to say that they apply to our subject with peculiar force. The study of history, when it is made to consist of memorizing mere facts, is to the common pupil a dry and unprofitable study. Still more is civil government dry and unprofitable when taught in the same manner. There is little virtue in a mere political document or collation of political facts. The answer that the school boy made to the question, "What is the Constitution of the United States?" is suggestive. He said it was the back part of the History that nobody read. Hence the book on government must be connected with real life, and to establish this connection is the business of the teacher. On this point three or four hints may be thrown out.

The teacher should not permit the Governor, for example, to be made a mere skeleton. He should see rather that he is made to the pupil a man of flesh and blood, holding a certain official position and exercising certain political powers. It is better to study the Governor than the Executive branch of the government; better to inquire, What does the Governor do? than, What are the powers of the Executive?

The teacher should stimulate the pupil to study the political facts about him. He should encourage him to observe the machinery of political parties, the holding of elections, council meetings, courts of local magistrates, and the doings of the policeman, constable, and

sheriff. This suggestion includes political meetings and conversations upon political subjects. By observation an undue personal attendance upon such proceedings is not meant. To that, of course, there might be several objections.

Pupils in schools should be encouraged to read the newspapers, for political among other reasons. The publications prepared particularly for school use to which the general name of "Current Events" may be given, are deserving of recommendation.

Still another thought is that the study be not made too minute. It should bear rather upon the larger features of the special topics. This remark is particularly applicable to the judiciary, which nearly all persons of ordinary education find more or less confusing.

The suggestions relative to observation of political facts are peculiarly important in a country like our own. To understand free government, you must be in touch with real political life.

In teaching Civil Government, the first point is to develop Civic Spirit—the spirit that will insist upon rights and perform duties.

The last word is a word of caution. The method that has been suggested can easily be made too successful. Our American atmosphere is charged with political interest and spirit; and, while the pupil who takes a lively interest in current politics, as a rule, will do better school work than the pupil who does not, the teacher must exercise care that partisan spirit be not awakened, and that occupation in current events do not mount up to a point where it will interfere with the regular work of the school.

B. A. HINSDALE.

PART I

HISTORY OF IOWA

CHAPTER I

THE BEGINNINGS OF GOVERNMENT—1673–1838

1. Meaning of the Name Iowa.—Local historians from the earliest times have disagreed regarding the meaning of the Indian word Iowa. Some good authorities who know the language of the red man well, state that it means "The Beautiful Land." Antoine Le Claire, an authority of the highest repute, is just as positive that the word means, "This is the Place." Henry R. Schoolcraft, also a notable authority, decides that the Indians used the word to mean "Across the River," calling the tribe which had left the old home in Illinois the Iowas. It is not possible to choose between these authorities, but there is agreement in the fact that the word is derived from the Indian language, and that there was a tribe of Fox Indians which bore this name, leaving it upon the map of the state in Iowa river, Iowa City, Iowa county and Iowa State.

2. History of the Use of the Name.—The first time the name appears in public records was in 1829. The Territorial Legislature of Michigan, sitting in the city of Detroit, organized all that part of the country

south of the Wisconsin river, west of Lake Michigan, north of Illinois, and east of the Mississippi river into a county, and called it Iowa. This county still exists, though of not such large size, in south-western Wisconsin. Following this act, the Legislature of Michigan created two counties in 1834, west of the Mississippi river, naming them Dubuque and Des Moines, and attached them, for judicial purposes, to this Iowa county. It was a natural thing, after the organization of the Territory of Wisconsin, in 1836, to speak of that part of its extensive Territory as the "Iowa District." When Congress divided the Territory in 1838, the name Iowa was readily attached to the new Territory and came as a matter of course in the naming of the State in 1846. The regular steps in the development and extension of the use of the word were Iowa county, Iowa court district, Iowa Territory, and Iowa State.

3. Early Explorations.—The fur trader and the Christian missionary were the first explorers of this country. James Marquette, a French Jesuit missionary, and Louis Joliet, a French-Canadian fur trader, were probably the first white men that ever saw the "Beautiful Land." On the 17th of June, 1673, with five French assistant boatmen, they entered the Mississippi river by way of the Wisconsin river, and drifting rapidly down the Father of Waters, Rio Grande, as they called it, landed June 25, in the present county of Lee, near the mouth of the Des Moines river. In 1680 Louis Hennepin, a Franciscan priest, with two fur traders, ascended the Mississippi river as far as the Falls of St. Anthony, naming them

for his patron saint. He gave the French name, prairie, to the meadowy, grassy plains he found in the region of Illinois and Iowa, and wrote an excellent description of the same, which was published at Paris in 1683. In 1682 La Salle, another French fur trader, left Canada for the purpose of exploring the Great Lakes and the country to the south and west. He passed down the Illinois river, and from its mouth down the Mississippi river to the Gulf of Mexico, naming the country Louisiana, in honor of his king. While he probably never saw Iowa, yet it is well to know this much of his expedition, as Iowa was so long a part of Louisiana, and came to the United States through the Louisiana purchase of 1803. From this time for one hundred and fifty years this entire country remained in the possession of the native Indian tribes, almost unknown to our Anglo-Saxon ancestors, who were busily laying the foundations of an empire along the Atlantic seaboard.

4. The Expedition of Captains Lewis and Clark.— In 1804 Captains Lewis and Clark were sent by the United States Government upon the famous exploring expedition to the Pacific Ocean. During that year they visited the western border of Iowa. They held a notable council with the Indians near the north-west corner of the present county of Pottawattamie, and named the great bluffs of the Missouri river at that point Council Bluffs. This name has been transferred since that time to the City of Council Bluffs, the county seat of the county. The purpose of this council was to inform the Indians of the new government that now claimed control of the

country, and thus endeavor to establish peaceful relations with them. During their sojourn in Iowa, one of their men, Sergeant Floyd, died, and was buried on the bluff of the Missouri, near the mouth of the Sioux River. It has ever since been known as Floyd's Bluff, and a small river near by has been called Floyd river.

5. The Expedition of Major Pike.—In the autumn of 1805, Major Zebulon M. Pike, a skillful mathematician and linguist, appointed to conduct surveys of various parts of the newly acquired territory of Louisiana, made an authorized official visit to the head waters of the Mississippi, and met the different Indian tribes in Iowa. He advised the Indians of the fact that the United States had acquired sovereignty over the country by the purchase of the rights of France, and that henceforth their dealings as tribes would be with the new government. The following year he was charged with the exploration of the interior of Louisiana, in the course of which he discovered Pike's Peak, in the Rocky Mountains, and reached the Rio Grande. He returned after numerous severe experiences, received the thanks of the government, published in 1810 an account of his expeditions, and finally became a brigadier-general in an expedition in 1813 against Canada and was killed in York, now Toronto.

6. The Title to the Soil.—Omitting all considerations of the vested ownership of the original inhabitant, the Indian tribes, it will be of interest to glance at the various changes of ownership through which the soil of Iowa has passed since this State was known to history.

1. So far as the history of the discovery and exploration is concerned, Iowa first belonged to France, since Marquette and Joliet, as already mentioned, were here May 13, 1673. Civilized nations conceded this claim, on the right of discovery, and France held possession until 1763, when, by secret treaty, this State, with other large portions of territory, known and unknown at that time, was ceded to Spain. This treaty was not made known until a year and a half after it was signed, and Spain did not obtain possession until 1769. By the treaty with Great Britain, in 1783, the United States was placed in possession of the east bank of the Mississippi river, except the part near its mouth.

2. Spanish control and authority prevailed in all this vast domain west of the Mississippi river, until October 1, 1800, when it was ceded by Spain to France, coming thus under the control of the revolutionary French government and the power of Napoleon Bonaparte.

3. April 30, 1803, Napoleon Bonaparte, being at war with almost all Europe, sold Louisiana to the United States to prevent it from falling into the hands of Great Britain, for the sum of $15,000,000. The province which thus came into the possession of the United States, was of vast though ill-defined territorial extent.

4. October 31, 1803, a temporary government was authorized by Congress for the newly acquired territory, but in reality no government existed except in name, as the French governor still remained in power at the request and by the authority of the United States.

5. March 26, 1804, Congress provided that Upper Louisiana, that part of the whole province north of the thirty-third parallel, consisting now of Arkansas, Missouri, Iowa, and Southern Minnesota, should be organized into a court district and attached to the territory of Indiana for governmental and judicial purposes. From this came the term "District of Louisiana," that occurs in the early history of all this part of the United States.

6. March 3, 1805, Iowa was included as a part of the Territory of Louisiana, with the capital at St. Louis.

7. The part of the Louisiana Purchase now known as Louisiana became Orleans Territory.

8. June 4, 1812, Iowa was embraced in what was then organized as the Territory of Missouri.

9. July 19, 1820, Missouri became a State, and Iowa with other territory was detached and forgotten, and remained a country without a government, either political or judicial, until June 28, 1834, when the abuses of outlawry and crime became so prominent and so serious that, as a means of redress and correction, it was included in the Territory of Michigan. During all these years, it is probable that the only civil law in force in Iowa was the provision of the Missouri Act, which prohibited slavery and involuntary servitude in the territories of the United States north of thirty-six degrees, thirty minutes, north latitude.

10. July 30, 1836, Iowa became a part of the newly organized Territory of Wisconsin, composed of the present States of Wisconsin, Iowa, and Minnesota, and the eastern part of North and South Dakota.

11. July 12, 1838, the Territory of Iowa was organized, including also the present State of Minnesota and parts of North and South Dakota.

12. December 28, 1846, Iowa was admitted into the Union as a State.

7. The First White Settler.—In 1788, the first white man settled within the present limits of the State of Iowa. This was just one year after the famous "Ordinance of 1787," whose promise of liberty, freedom, and education exerted such a great influence upon the great Northwest. Julien Dubuque, this first white settler, was a Frenchman, a native of Canada, and, previous to this, a resident of Prairie du Chien, where Fort Crawford was located and where a trading post had already been established. September 22, 1788, Dubuque purchased from Blondeau and other chiefs of the Fox Indians the right to occupy a tract of land covering the site of the present city of Dubuque. In 1796, the Spanish governor, residing at New Orleans, confirmed this grant and thus established the title in a civilized way. Dubuque operated the lead mines found here for several years, and had in his employ ten white miners. With the assistance of two of them, he laid out a village and planned for the future of his settlement.

8. Miner of the Mines of Spain.—Dubuque was a prominent man of adventure and business in his time in this frontier town. He called the tract of land by the name "Mines of Spain," as a compliment to the Spanish governor who had granted him privileges and business favors. He married a Fox Indian squaw, Potosa by name, and so prospered in his busi-

ness pursuits as to be the wealthiest and the most influential citizen of his time in Iowa. He died in 1810 as a victim of his own vices, and was buried in the high bluff overlooking the Mississippi river, at the mouth of Catfish creek, a mile or more below the present city of Dubuque. A leaden coffin was made to hold his remains, and a vault was constructed of roughly dressed lime stones taken from the edge of the bluff, only a few feet distant from the site of the grave. Over the grave was erected a cedar cross hewn square and about twelve feet high. On the arms of the cross was inscribed in French the following: "Julien Dubuque, Miner of the Mines of Spain. Died March 24, 1810, aged 45 and a half years." The grant of land thus confirmed to Dubuque by the Spanish authorities was afterward contested in the United States courts, and the decision reached, after a full and careful investigation, was that the title claimed by Dubuque as conferred by the Indians was merely a lease or permit to work the mines, and that the title to the lands themselves was in the United States and the purchasers from the land offices of the United States (16 Howard Rep. 224).

9. Other Early White Settlers.—In 1795, the Lieutenant-Governor of Upper Louisiana granted Basil Girard, a Frenchman, a tract of land amounting to 5,000 acres. This tract was located in Clayton county, and was called the "Girard Tract." Girard occupied this land with others under the Spanish, French, and American governments, and was finally granted a patent in his own right by the land office of the United States. The oldest legal title to land in

Iowa is that of the site of Montrose, Lee county. March 30, 1799, Louis Honore-Tesson obtained from the acting governor of Upper Louisiana, "a permit to establish himself at the head of the lower rapids for commerce in peltries and to watch the Indians, and keep them in fidelity, which they owe His Majesty." Here he took immediate possession, planted an orchard of apple trees, built a cabin and kept control until 1805, when the property passed to Thomas F. Roddick, whose heirs were confirmed in the original title by the United States Supreme Court in 1839 (14 Howard Rep. 513), as the owners of one mile square of the original league of land.

QUESTIONS AND TOPICS.

1. Give the origin and the development of the word Iowa.
2. Give an account of Marquette, Joliet, Hennepin, and La Salle.
3. Origin and application of the term Louisiana.
4. What was the object of the numerous government expeditions sent into the unsettled part of the country?
5. What nations and States have had control of Iowa soil?
6. What was the Louisiana purchase?
7. What was the "Ordinance of 1787"?
8. What is a title to land? What is a "grant of land"?

CHAPTER II

THE ORIGINAL INHABITANTS

10. The Indians.—The original inhabitants of Iowa, at the coming of the white man, were the Indians known in history by the tribal names of Sioux, Sac, Fox, and Iowa. There were other minor tribes, but these were the strongest, the most contentious over their rights of ownership, and therefore in history the best known. By repeated treaties, the United States extinguished their titles to the lands they occupied and removed them further westward, until in 1870 there were but four hundred and sixty-six Indians remaining in the whole State of Iowa. These tribes were divided into clans or families, and usually selected the name of some animal as their family type or characteristic designation. Hence the names Eagle, Pigeon, Wolf, Bear, Elk, Beaver, Snake, etc., were thus applied. The number of clans in a tribe was an even number, eight in the Fox tribe, twelve in the Sac tribe. These clans were made up of lodges, each lodge consisting of one family. The husbands of a clan were all known as brothers, the wives as sisters, and the children recognized each of the brothers as father and each of the sisters as mother; hence there were no cousins, nephews or nieces known among them. These several clans or families were also accustomed to have peculiar ways of cutting their hair so as to designate to which one of these families they belonged. Over

tribes chiefs were placed; sometimes hereditary, sometimes by election, as braves who distinguished themselves in war were made war chiefs, and thus it happened that there were often two or more chiefs in the same tribe. The more prominent chiefs of these several tribes have left their names on the map of the State as Black Hawk, Keokuk, Tama, Mahaska, Waukon, Osceola, Decorah, Winneshiek, Wapello, Appanoose and Poweshiek. The tribal names are represented by Sioux, Winnebago, Sac, Iowa, Fox, Osage, Pottawattamie, Cherokee, and Chickasaw. Other names derived from the Indians are Anamosa, Monona, Okoboji, Pocahontas, Oskaloosa, and Ottumwa.

11. The Government and the Indians.—There were many treaties with these Indians from time to time after the organization of the United States government. As years went by, the White man time and again desired to encroach upon the hunting grounds of the Red man, and hence induced his government to change its demands and modify greatly its treaties. It was always the strong dictating to the weak, and every time the White man had his way and the Red man was required to move on to a new and undesired home. From the most early beginnings, the United States legally treated the Indians as the owners of the soil, and conducted its affairs as if it was necessary to purchase these lands at a price satisfactory to the original owners. With these business dealings, came treaties that governed them, and also promises of future guarantees and protection. Notwithstanding the good faith of the government was pledged at these treaty-making meetings never to molest the Indians in their

newly-assigned homes, yet the advance of civilization constantly encroached upon the natives and the White man again and again demanded a revision of these treaties and a surrender of their possessions, whether willing or not. As a result of this policy and the violation of the treaties upon the part of the United States, there was little faith between the settlers and the natives, and a constant border warfare has been the history of frontier life.

12. Treaties with the Indians.—1. The first treaty made by the government of the United States with the Indians of this part of the Northwest was conducted by Arthur St. Clair, Governor of the Territory northwest of the Ohio river. At this treaty meeting, which occurred January 9, 1789, there were two chiefs of the Sac Indians. The principal object of this treaty was to make peace and friendship between the several tribes, and to establish the boundary lines between the United States and the Indians.

TERRITORIAL SEAL OF NORTHWEST TERRITORY.

2. After the settlement of Kentucky and Ohio had progressed far enough to make the Mississippi river very desirable for navigation, and when the French and Spanish interests in the Mississippi Valley passed into the control of the United States by purchase, a movement was at once begun to get new treaties with the Indians. In November, 1804, William Henry Har-

rison, then Governor of Indiana Territory, undertook the business at the direction of President Thomas Jefferson, and met the chiefs of all the tribes interested at St. Louis. He succeeded in securing a treaty that surrendered all the land east of the Mississippi river and a large tract on the west in Missouri, for which the Indians were to receive $2,234.50 in goods and $1,000 annuity thereafter. At the same time the United States promised never again to interrupt the Indians in the possession of their land now rightfully held by them, and to protect them in the enjoyment of the same.

3. Notwithstanding these pledges, in 1808 the government erected Fort Madison on the Indian land on the west bank of the Mississippi river, and forcibly and openly took possession. The Iowa town of that name still marks the place of treachery and bad faith where this fort was established. The Indians were very greatly dissatisfied with this act, and never again believed the professions of friendship on the part of the officers of the government. Considering this act as nullifying the treaty, the Indians even denied that their lands east of the Mississippi river were ever legally ceded. The mistakes of government officials and the sharp tricks of traders and frontiersmen, as well as the apparent lack of fidelity of the government, so alienated the different Indian tribes that the Black Hawk War was provoked, and most of the Iowa tribes were in sympathy with the uprising of the Indians and aided in the hostilities.

4. On the 15th of April, 1832, General Winfield Scott made a treaty with the Sacs and Foxes at the

present site of Davenport, by which a small strip of land in Iowa, called the Black Hawk Purchase, was released to the United States for settlement. This included 6,000,000 acres of very valuable farming land, constituting the eastern portion of the present State of Iowa. In June, 1833, the Indians peaceably removed from these lands, and gave the white people charge of their much-loved childhood home. Again in 1837, the chief Keokuk and his associates made another treaty and ceded a smaller tract to the settlers for occupation; and in 1842, Governor Chambers, of Iowa Territory, made a final treaty with the Sacs and Foxes, whereby all their claims to lands in Iowa were sold to the General Government. Thus is given briefly the history of the dispossession of the aborigines of their lands and the acquirement of the title by the people of the United States.

5. In June, 1846, the Pottawattamies relinquished their reservation and crossed the Missouri river, and in July 23, 1851, the Sioux Indians sold their lands and agreed to yield possession in two years, and the title to all Iowa lands was established in the government of the United States.

13. The Half-Breed Tract.—From 1834 to 1837, the government had a camp established at Montrose, on the Mississippi, which was called Camp Des Moines. At the foot of the Rapids was an old trading house, afterwards known as "Rat Row," and two or three old cabins. This was known as the point afterwards named for Keokuk, the eloquent old chief of the Sac tribe. The first settlers here were engaged chiefly in "lighting and towing freights" over the

Des Moines rapids. In a treaty made with the Sac and Fox Indians in 1824, there was reserved for the use of the half breeds of their tribes, in the south part of what was afterward Lee county, a very valuable tract of land, containing about one hundred and thirteen thousand acres. By an Act of Congress, approved June 13, 1834, the Government released to these half breeds, as tenants in common, the fee simple title to these lands. The treaty with the Sac and Fox Indians did not fix either the names, number, or indentity of the persons for whom the reservation was made. Hence, here was a chance for speculation and fraud. The number who claimed to be half breeds was fraudulently increased and a company was duly incorporated to buy up half-breed titles.

14. Legal Efforts Regarding Titles.—The Territorial Legislature of Wisconsin, which held its session at Burlington, in 1838, passed a special act appointing Edward Johnston, Thomas S. Wilson, and David Brigham commissioners to settle all rights to the property. Claimants to the "half-breed tract" should make proof of their titles, and the commissioners should report their finding to the Territorial District Court. The court was authorized, after notice by publication, to enter a decree establishing titles. Before this work was completed, the next Legislature, January 25, 1839, repealed the law, but in the repealing act authorized the commissioners to sue the owners of the Half-breed Tract for their services. This they did and Johnston and Brigham each recovered judgments against the "owners of the Half-

breed Tract," by that general name and description. Executions were issued on these judgments, and the tract was levied upon and sold at sheriff's sale to Hugh T. Reid. The Supreme Territorial Court at one time held this title to be valid, and Reid narrowly escaped being a great landed proprietor. Meantime the Territorial Legislature began to encourage settlements on the Half-breed Tract by legislative assurance to squatters, that, if all other titles should fail, possession should be not nine but ten points of the law. The very worst that a settler had to fear was, that improvements should be assessed by a jury of his peers, and that their value thus ascertained should be a lien on the land.

15. Final Settlement of the Case.—In 1840, a suit in partition was begun in the Territorial Courts in the name of Josiah Spaulding and twenty-two other purchasers from some of the half-breeds against "the known and unknown owners of shares in the Half-breed Tract." Service was made by publication. Commissioners were appointed by the court, who divided the tract into one hundred and one shares, of which forty-one were claimed by a New York Company as assignees. The title under this decree of partition, after years of litigation, was finally established and quieted. These complications also became political, and in the fall of 1836, when the question of a separate Territorial organization for Iowa was agitated, a public meeting was held six miles west of Keokuk, at which many thought that the Half-breed Tract could not be included in any other organization, and those assembled seriously contemplated starting an inde-

pendent government. But after several orators present had successively mounted the head of a whiskey barrel, and exhausted their eloquence in debating the question, the interested squatter-residents became convinced that the reservation was still within the jurisdiction of the government of the United States and that they still owed it their allegiance.

QUESTIONS AND TOPICS.

1. What is a tribe of Indians? Why are they called original people?

2. What are the characteristics of government among the Indians?

3. What is a treaty? In what way did the United States deal with the Indians? Why were the guarantees of the Government not kept?

4. What was the Northwest Territory? What were the special points in its organization worthy of special remembrance?

5. What is meant by the phrase "tenants in common"? Why was there so much difficulty concerning the Half-breed Tract? Why did it become afterward such a political factor?

CHAPTER III

IOWA TERRITORY: 1838–1840

16. The Organic Act.—On the 12th. of June, 1838, Congress passed an act providing "that from and after the 3d. day of July next, all that part of the Territory of Wisconsin that lies west of the Mississippi river, and west of a line drawn due north from the head waters or sources of the Mississippi to the territorial line, was for temporary purposes constituted a separate Territorial government and called Iowa." Provision was made for the President of the United States, by and with the advice of the Senate, to appoint a governor, a secretary, a chief justice, two associate justices, a United States attorney, and a marshal, to take charge of this new Territory and see that law and order prevailed within its borders. This act appropriated $5,000 for a public library and $20,000 for the erection of public buildings.

17. The Power of the Governor.—The governor was appointed for three years, and the other officers for four years. The governor was required to reside in the Territory, was commander-in-chief of the militia, and was required to perform the duties of superintendent of Indian affairs—not a small task at that time. All laws passed by the legislature were to be approved by him before they should take effect, and he was invested with the power to grant pardons for all offences that were committed under Territorial law.

He was also granted large discretion and authority in the determining of local officers, as the organic act states, he was to "nominate, and by and with the advice and consent of the legislative council, appoint all judicial officers, justices of the peace, sheriffs, and all militia officers except those of the staff, and all civil officers not provided for by the organic act."

18. The Judicial Power.—It was also provided that the Territory should be divided into three judicial districts, and the governor had the right to define the judicial districts of the Territory, and assign the judges appointed to the several districts of the Territory, and appoint the time for holding courts in the several counties, until otherwise provided by the legislature. Each judge was required to live in and hold the courts of his own district, and the three judges were required to meet at the seat of government once a year and together hold a supreme court. This act also provided for a Territorial legislature consisting of a council and a house of representatives, the former consisting of thirteen and the latter of twenty-six members, elected by the people.

19. The First Governor.—Robert Lucas, formerly Governor of Ohio, was selected by the President to be the first chief executive and undertake all these many duties. He proved to be a very wise selection, and used his power, so liberally conferred, with good judgment and with benefit to the future commonwealth. He at once caused a census to be taken, apportioned the members of the legislature between the counties and issued a proclamation for an election of delegates to Congress and members of the legislature.

He established the temporary seat of Territorial government at Burlington, and convened there the first Legislature of Iowa on the 12th of November, 1838.

ROBERT LUCAS.

The patronage of the governor at the first organization of the Territory was very large, and he was thus enabled to exert a great influence in public affairs. It was very fortunate that a man of such character, wisdom, and good intentions was appointed to this important office, but it was inevitable that very soon such power would be resisted and a change demanded that would reduce the governor's office to executive duties, and leave to the people the selection of all their rulers, great and small.

20. The First Legislature.—The first legislature was mostly composed of young, enterprising men, many of them afterwards becoming prominent people in the history of the State; but, as it happened, their principal business consisted in controversy with the Governor and the other officers appointed by the United States government. The first legislative acts were the granting of charters to the cities of Davenport and Muscatine, and the giving away of many exclusive privileges to private individuals. Some of

these privileges afterward became very profitable to the proprietors, and likewise very onerous and injurious to the people. This was particularly true with ferry charters, which gave authority and control to private individuals to such an extent as to be the source of much complaint and not a little politics. This Legislature also provided for the erection of a penitentiary at Fort Madison, and a Capitol building to be located in Johnson county on a suitable site to be selected by three commissioners appointed by the legislature. This place, when selected, surveyed, and platted, was to be called Iowa City, and was to be the permanent capital.

21. Controversy with the Governor.—This first Legislature very bitterly disagreed with the governor respecting the meaning of the organic act, which defined the respective powers of the governor and the legislature. This disagreement was much intensified by some trifling and witty communications made by the secretary of the Territory in reply to a request of the legislature for certain stationery and other supplies that the members deemed necessary for the transaction of the regular official business of the session. As a consequence of these differences of opinion as to the legal prerogatives of the executive and the legislative departments, the Governor became prejudiced in feeling and was less disposed to yield his official opinion as to authority and rights than he otherwise would have been, and hence very little effective business was possible, since controversy absorbed the time and attention of the members. The Governor's veto being absolute, he used it so effect-

ively as entirely to annul all acts of the Legislature that did not personally appeal to him as being for the best interests or even as not being put in the best way as to language.

22. Opinion of the Legislature.—The Legislature claimed that he exceeded his authority, and that the words in the organic act: "shall approve all laws passed by the legislative assembly before they take effect," should be interpreted to mean that it was the imperative duty of the Governor to approve all acts passed by the Legislature of the Territory, and therefore the mere fact of the governor vetoing them, or even withholding his approval, did not prevent the acts of the legislature becoming laws. This little history needs to be kept in mind, because since this struggle was ended, the Governor of Iowa has rarely used the veto for the purpose of checking the will of the Legislative Assembly, and asserting thereby his own judgment and will in thwarting legislation, but has usually left the responsibility of the wisdom of such laws to rest upon the Legislature who were thus accountable to the people who elected them. But the action of the members of the first legislature, their interpretations of the organic law, and their abuse of authority as represented by the governor, did not intimidate Governor Lucas or change his mind in the least in the discharge of his duties as he understood them. He was of such personal character that he proposed to do what he supposed was right, and let the future citizen and historian judge of the wisdom of his official course.

23. The Appeal to Higher Power.—When the legislature found that threats, abuse, resolutions, and

arguments did not move him, the next attempt was to remove him from office, and a memorial was sent to the President of the United States declaring his unfitness and stubbornness, as well as his arbitrariness and usurpations, and praying, in the strongest terms for his immediate and unconditional removal from office. President Van Buren did not approve of the demand from the Legislature, and hence Governor Lucas remained in office until there was a change in the administration of the Federal government. The difficulties that had arisen between the Governor and the Legislature, and the very frequent use of the absolute veto power by the governor, attracted the attention of Congress, and some amendments were made to the organic law permitting the legislature to pass a measure over the governor's veto by a two-thirds vote, and also authorizing the legislature to pass laws permitting the people to elect all their local officers thus far appointed by the governor.

24. The Second Legislature.—As a consequence of the large controversy that had occurred at the session of the first legislature, the issue of the next election was the curtailing the power of the governor and the increasing the power of the people and their representatives, the members of the legislature. "Home rule" was a doctrine on these prairies, and tyranny and dictatorships were condemned as out of conformity with American institutions. Hence, with the coming together of the second legislature, there was no delay in taking advantage of the act of Congress. The first thing done was to provide for the people electing all their officials, and since that time

the governor's appointing power has been small indeed, and the feeling then aroused was of such power that the people are still jealous of their rights as electors in choosing officers, even if such method of public election is in some cases not considered best. This is so far true, that the people are even now in favor of electing United States senators at a general election, did the United States constitution and laws permit.

The Extra Sessions of the Legislature.—Under Territorial organizations, the legislative assembly met annually in regular session to transact such business as the needs of the growing population might demand. There were two extra sessions called during Territorial times, both being provided for by acts of the assembly approved by the governor. One of these occurred in November, 1840, and the other in June, 1844. Both of these occurred for the purpose of redistrictng the Territory so as better to apportion the members of the council and the house of representatives among the several counties of the Territory, and also to take steps for a constitutional convention, as statehood was recommended by the governor. In Territorial days the census was taken quite frequently and at irregular times, and in both of these cases there seemed to be a necessity to reapportion before the next assembly was chosen. There were, therefore, eight regular sessions of the Territorial legislative assembly from 1838 to 1846.

25. The Boundary Dispute with Missouri.—During this time the boundary line between Missouri and Iowa became a point of contest between the authorities of the State of Missouri and of the Territory of Iowa. On the 18th of June, 1838, Congress took steps to settle the growing controversy by passing a law to have the southern boundary of Iowa ascertained and marked. This act provided for a boundary commissioner from each commonwealth, and one from the United States. Missouri declined to be repre-

sented upon this commission, and attempted to exercise jurisdiction north of the Indian Boundary Line, surveyed and marked in 1816 by John C. Sullivan, by direction of the surveyor-general of the United States, and up to this time accepted as the regularly authorized boundary line between Iowa and Missouri. The attempt to collect taxes north of this line in Van Buren county, by the sheriff of Clark county, Missouri, precipitated the conflict. Immediately the Iowa authorities proposed to leave the adjustment of the controversy to Congress, but the Missouri authorities proposed to assert the rights of the State by armed force.

26. The Position Taken by Iowa.—Governor Lucas met this proposition by a rejoinder that this was not a controversy between a State and a Territory, but between Missouri and the United States, and, as a representative of the latter, he would hold possession at all hazards of all territory north of the Sullivan boundary line, and see to it that citizens of the United States were protected in their rights, and the laws faithfully and fully executed. To this end he called out the militia of the Territory to aid the civil authorities in the enforcement of law and order. Proclamations were issued by both governors, and war seemed to be promised in case of an invasion of Iowa by the Missouri militia; and anyone acquainted with the character of Governor Lucas could understand with what kind of a person the Missouri claimants had to deal, and that he would have done his very best to carry out his proclamation. Seeing the firm stand taken by Iowa, and surprised at the position of

defense assumed, the Missouri authorities allowed the whole matter to be referred to the United States Supreme Court, by whose decision all the territory claimed by Iowa was approved December, 1848, proving the justice and the merit of the claim established and maintained by Iowa's first governor.

27. A Change in Administration.—The year 1840 was a time of great political excitement in the United States over the election of President; even the Territory of Iowa was much aroused and large interest was the consequence. The Democratic party had been in control of the general government for the past twelve years, and, by virtue of custom and the "spoils system," members of that party held all the appointive officers of the Nation. Governor Lucas and all his associates were therefore Democrats, and, with a change in the National government by the election of William Henry Harrison as President and John Tyler as Vice-president, a general change came in all the offices, from secretary of state in the President's cabinet to the smallest cross-road postmaster. Although President Harrison had determined to remove Governor Lucas and his associates, and had decided to appoint John Chambers, of Kentucky, as Governor of Iowa Territory, yet his sudden death brought John Tyler to the presidency, and he appointed Chambers as governor, March 25, 1841. He entered upon his duties May 13, 1841.

28. The Seat of Government Moved.—On the 30th day of April, 1841, Governor Lucas issued a proclamation changing the capital from Burlington to Iowa City, and convening the legislature on the first

Monday of December, 1841. Governor Chambers accepted this conclusion, and moved the seat of government to the temporary capitol building provided by the citizens of Iowa City, until the permanent buildings being erected should be completed. Thus Iowa City became the permanent capital of the Territory and the temporary capital of the State.

29. The Land Claim Laws.—The United States has uniformly prevented the White man from invading the Indian country and settling upon the lands previous to the going into effect of a treaty. There was no attempt after that to exclude settlers, but no right nor title to lands was recognized as being able to be secured until the lands were surveyed and advertised for sale at public auction. A pre-emption or exclusive right to purchase public lands could not be acquired until after the lands had thus been offered and not sold for want of bidders. Then, and not until then, could an occupant, making improvements in good faith, acquire a right over others to enter the land at a minimum price of $1.25 per acre. The claim laws were unknown to the United States statutes or courts. They originated in the eternal fitness of things, and were enforced, probably, as belonging to that class of natural rights not enumerated in the constitution and not impaired or disparaged by its enumeration.

30. Organization of the Settlers.—The settlers organized in every settlement prior to the public-land sales, appointed officers, and adopted their own rules and regulations. Each man's claim was duly ascertained and recorded by the secretary. It was the duty of all to attend the sales. The secretary bid off

the land of each settler at $1.25 an acre. The others were there to see, first, that he did his duty and bid in the land, and, secondly, to see that *no one else* bid. This, of course, sometimes led to trouble, but it saved the excitement of competition and gave a formality and degree of order and regularity to the proceedings that would not otherwise have obtained. As far as practicable, the Territorial legislatures recognized the validity of these "claims" upon the public lands, and in 1839 passed an act legalizing their sale and making their transfer a valid consideration to support a promise to pay for the same. (Acts of 1843, page 456.) The Supreme Territorial Court held this law valid. (1. Morris, 70.) It was not, therefore, a personally safe business for speculators or new residents to attend the land sales and offer to bid in the lands offered at auction as the laws of the United States intended, and the original squatters obtained the lands thus purchased if they paid the nominal price of $1.25 allowed by law. However, many were never able to pay for their lands, and soon moved on to make new claims where the surveys were not yet completed.

QUESTIONS AND TOPICS.

1. What is an organic act? Why was so much power granted the governor? What is a city charter? Why were ferry rights and other grants so injurious to the public?

2. What was the final effect upon Iowa of this controversy with the governor? What is "Home Rule"?

3. What is an extra session of the Legislature? How called?

4. What is the effect of a change of President upon the territories and public offices?

CHAPTER IV

STEPS TO STATEHOOD

31. The Recommendation of the Governor.—Governor Lucas, in his message to the extra session of the legislature, in 1839, recommended that the necessary steps be taken to secure the admission of the Territory to the Union as a State. This opinion was approved by a majority of that legislature, and in July, 1840, an act was passed, providing for a popular expression on the desirability of this step. At the October elections of that year, a vote was taken on the proposition, resulting in the people rejecting it by a large majority. The issue turned mainly on the point of expense, it being supposed that a State government would be more costly to the citizens, since the Territorial government was in part maintained by the General government. At the next session of the legislature, in 1841-42, a similar act was passed, and this again was rejected by the people at the succeeding August election. Another legislative act of the same nature was passed February 12, 1844, submitting the question to the people at the ensuing April election. This time the proposition was received with less opposition, and a majority vote favored a constitutional convention and the preparing of the Territory for application to be admitted to the Union.

32. The First Constitutional Convention.—In pursuance of the settled policy to seek statehood, del-

egates to a constitutional convention were elected in August, and the convention assembled in Iowa City, October 7, 1844. This convention agreed upon a constitution, and submitted the same to Congress for approval. This was at a time when there was much controversy in the United States Congress over the admission of States to the Union, since every new State was likely to disturb the balance of power that existed between the North and the South, between slave States and free States. The admission of Iowa was therefore resisted by the South because it would become a free State; besides the proposed area was too large to suit certain congressmen from the North who were desirous of making as many free States as possible, which would soon give to the free States the control of the United States Senate, and thus restrict the slave power of the South. Through these two causes the action of Congress was delayed until March 3, 1845, when a compromise was made and a joint bill passed admitting Florida in the South and Iowa in the North. The act as passed modified the boundaries of the State of Iowa submitted by the first constitutional convention, and again aroused controversies that delayed the actual admission of Iowa to the Union until December 28, 1846.

33. The Iowa Boundary Question.—The boundaries of the proposed new State of Iowa as adopted by the first constitutional convention, were as follows: "Beginning in the middle of the main channel of the Mississippi river opposite the mouth of the Des Moines river; thence up the said river Des Moines, in the middle of the main channel thereof, to a point where it is intersected by the 'Old Indian Boundary Line,' or

the line run by John C. Sullivan in the year 1816; thence westwardly along said line to the 'Old Northwest Corner of Missouri;' thence due west to the middle of the main channel of Missouri river; thence up the middle of main channel of the river last mentioned to the mouth of the Sioux or Calumet river; thence in a direct line to the middle of the main channel of the St. Peter's (Minnesota) river, where the Watonwan river (according to Nicollet's map) enters the same; thence down the middle of the main channel of said river to the middle of the main channel of the Mississippi river; thence down the middle of the main channel of said river to the place of beginning."

34. The Act of Congress.—The change made by Congress curtailed the proposed constitutional territory on the west by selecting the meridian drawn seventeen degrees and thirty minutes west of the meridian of Washington, as the western boundary, and leaving the others as already determined. This gave a boundary that would be located now very near the present boundary between Ringgold and Taylor counties on the south and Kossuth and Emmet counties on the north.

35. The View of the People.— The constitution as amended by Congress was voted upon by the people at the following April election. The party controversy became most intense and the boundary question was the principal discussion, though there were other parts of the constitution that were regarded as objectionable to large numbers of electors. The Whigs mainly insisted on rejecting statehood under these conditions; and the Democrats asserted that a

change of boundaries to suit the Iowa people would not be conceded by Congress, and that the people should be satisfied with the very reasonable reduction in the area of the State that had been made. Despite the arguments and the efforts of the dominant party, the Democrats, to support the measure, the people rejected the constitution by a large and decisive majority, and, for the present, statehood plans were supposed to be at an end.

36. The Second Attempt.— However, the Democrats still had control of the legislature, and the reaction against statehood being supposed to have subsided, they again in May, 1845, resubmitted the same constitution to the people at the August election. The governor, a Whig, vetoed this measure, but the act was quickly passed over his veto and the campaign was renewed in all its intensity. The Democrats again favored acceptance and, the Whigs again opposed, claiming that a new constitutional convention was a necessity. When the vote was counted, the proposed constitution was again rejected by a decisive majority. The friends of statehood were therefore compelled to call a new convention, as the politicians of national prominence were so anxiously waiting for the offices of the new state that the question could not be dropped from public attention.

37. Other Constitutional Questions.— Although the boundary question was the most prominent in the party controversies concerning statehood in 1845, yet there were other points in the constitution that were in part the cause of its rejection. By the constitution of 1844, all incorporations of any kind were dis-

couraged and almost prohibited. Their existence was limited to twenty years, all the property of the individual members of a corporation was liable for its debts. The legislature had the power to repeal any law that authorized corporations and close up their business at any time. In addition it was stated that "the property of the inhabitants of the State shall never be used by any incorporated company without the consent of the owner." There were to be no banks without consent of the people, and the legislature could not create a banking institution nor grant banking privileges unless the charter and all its provisions were submitted to the vote of the people at a general election. This was a plan to have a State bank with branches, if ever anything was to be done. A large number of the business men of the Territory considered these constitutional provisions too sweeping and too much opposed to business development and prosperity, and hence they also opposed with all their power a constitution that assumed that corporations, banking, and internal improvements, only possible by combinations of capital, were an evil, were bad public policy, and were therefore to be prohibited.

38. The Opposition to Banks and Corporations. — The constitution of 1844 was in harmony with the views of the people of the Territory on the question of banks and other corporations. The Miner's Bank at Dubuque had provoked a great deal of opposition, and the Territorial legislature had compelled it to close up its business by repealing its charter, May 14, 1845, at a time when the Territory was its debtor for considerable amount of borrowed money. Hostility was

greatly increased by the people being swindled by numerous irresponsible and fraudulent corporations. The Democratic party was the supporter of all this opposition to banks and other corporations, and, being in the place of authority, was able to dictate the policy of the constitution. The same ideas prevailed in the constitution of 1846. This one principle of government alone prevented internal improvements such as only incorporated companies could undertake, and finally led to a third constitutional convention in 1857 that was more moderate in these particulars, and that provided means for such organizations of capital, with restrictions and liabilities, that business men and capitalists would be willing to organize banks and other corporations.

39. The Second Constitutional Convention.— The constitution of 1844 having been twice rejected by the Iowa people at the polls, it became necessary to bring about some compromise that would be acceptable alike to the people of the Territory and the Congress of the United States. It was evident from the debate in Congress at the time of the vote to admit Iowa, March 3, 1845, that Congress would never consent to admit the Territory as a State with such a large area, and it was also evident that the people of Iowa were united on the point that the western boundary must be the Missouri river. In 1845 great navigable rivers were of large importance in commerce, and to have on the borders of a State two such rivers as the Mississippi and the Missouri was considered as positively determining the future commercial prosperity of its people. Today, while great water-ways are still

valuable, yet, since the advent of railways, they do not have the importance that belonged to them at the time under consideration. To adjust these matters, and get the question again before Congress, the legislature provided for a second constitutional convention, to meet at Iowa City, May 4, 1846.

40. The Result of the Work.— This convention assembled at the appointed time and rapidly completed its work, as it readopted the most of the constitution of 1844. It took positive action against banks by prohibiting them altogether, and it modified the former proposition regarding corporations by prohibiting the legislature organizing any corporation by special acts, but authorizing general laws to be passed that would permit necessary and beneficial corporations to be organized and conducted. The boundary dispute was compromised by placing the western boundary at the Missouri and the northern boundary at the parallel of north latitude forty-three degrees, thirty minutes. This convention completed its assigned duty, May 19, 1846, its work was approved by the people at a popular election, August 3, 1846, the change in boundaries was accepted by Congress, August 4, 1846, and Congress admitted the Territory of Iowa with the new boundaries as a State, December 28, 1846, thus closing one of the most memorable contests of its kind that ever occurred in the history of the United States of America.

41. The Hard Times.— The financial trouble of 1837, which produced financial ruin in older States, drove many families into the wilderness because they had not the means to pay for their lands. Following

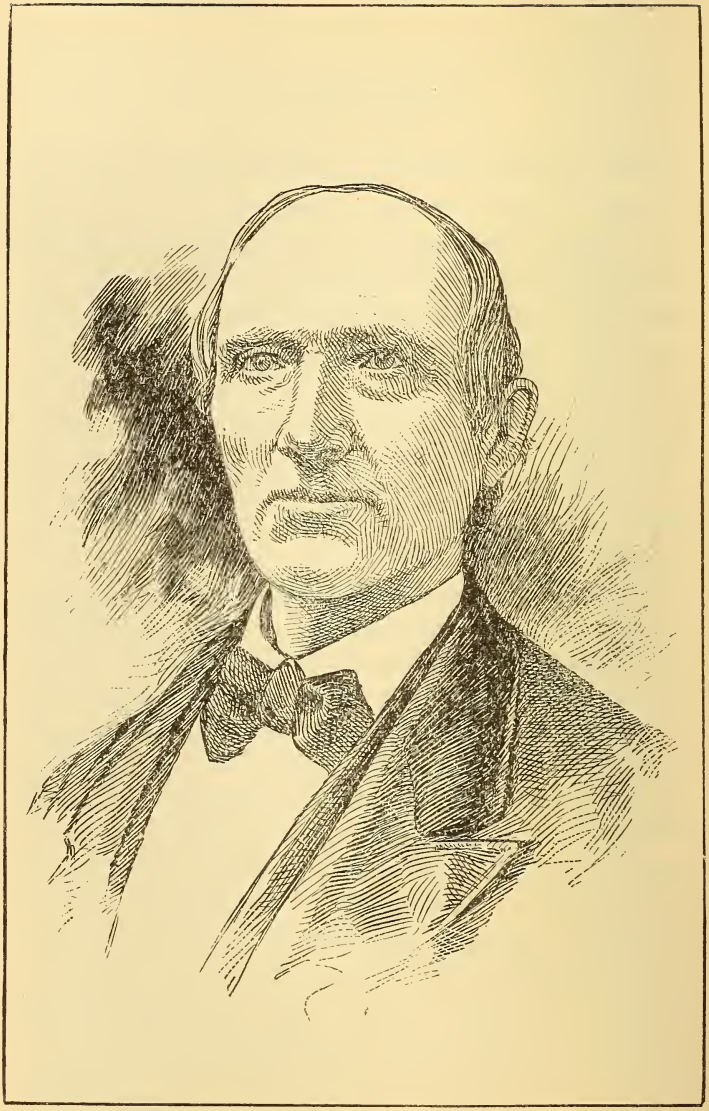
the wake of the settler was the army of money lenders, who knew no mercy nor limit except what they could get from desperate necessities. The legislature of 1843 attempted to place a limit by fixing ten per cent. as the legal contract rate of interest. But it was easy to evade the law. There was nothing to compel the usurer to loan money at ten per cent., nor was there anything to prevent his entering the land by the consent of the settler, with an agreement to convey it upon the payment of an amount of money equal to the entrance money and forty per cent. Neither was it easy for the settler to earn the money to redeem his land. However fertile the soil, however industrious the toiler, yet without market for his produce it was hard to accumulate money. These were days of sadness and distress. Wheat was hauled one hundred miles and sold for thirty-seven and one-half cents per bushel, corn and oats brought six to ten cents a bushel, pork sold at one dollar per hundred, and the best horses sold for fifty dollars. Nearly all were in debt, and the sheriff and the constable were the most frequent visitors at almost every man's door. It is not possible to do justice to the sacrifices and the hardships of these times. To develop a new country from a wilderness to a place for civilization is always hard enough under favorable conditions; but to experience what the early Iowa settler was compelled to endure in these hard times must be left largely to the imagination of the reader, and then it is very doubtful whether his most pathetic conception can equal the sacrifices, the hardships, and the struggles of the first Iowa settlers.

CHAPTER V

THE DEMOCRATIC PERIOD OF STATE CONTROL: 1846-1854

42. The First Steps.—After the people ratified the proposed constitution at a popular election and Congress had accepted the change in boundaries, arrangements began to be made to provide for a change from the Territorial to the State government. To accomplish and have everything ready as soon as Congress should pass the act of admission as a State, Governor James Clark issued a proclamation stating the facts and appointing October 26, 1846, as the time to elect State officers and members of the general assembly.

43. The Importance of the First State Election.—This was a most important and interesting election, because the recent political controversies had somewhat unsettled the political parties, and because the coming general assembly would have the privilege of choosing the United States senators and three supreme judges; and the most prominent politicians of both the Whig and Democratic parties were anxious not only to secure these offices, but also to control the destinies of the young and prosperous State. The election returns proved that the Democrats were in the majority, notwithstanding the party controversies, and had elected the governor, Ansel Briggs, and other State officers; but there was still much cause for anxiety, because dissensions over local matters had deprived the dominant



ANSEL BRIGGS, FIRST GOVERNOR OF THE STATE OF IOWA.

party of certain representatives that were essential to the election of United States senators and supreme judges, and had resulted in electing other persons, whose position on party questions was not certainly to be depended upon at the meeting of the General Assembly.

44. The First Deadlock.—Lee county broke the party traditions on local issues (on account of legal difficulties over the Half-breed Tract), and chose independent representatives, while the Democrats were outwitted by the Whigs in Des Moines county and defeated at the polls. Shortly before the day of election, certain wealthy Whigs employed enough Democratic voters and sent them out into the country, at extravagant wages, to drive hogs to market, a common occupation at that time, and although there were no hogs to bring in from the remote points to which they were sent, their absence gave the Whigs the majority, and they thus accomplished by stratagem what they were not able to secure at the polls with a full vote. These two events helped make the first political deadlock known to Iowa, and prevented the State of Iowa from having her lawful representatives in the United States Senate.

45. The Balance of Power.—On the assembling of the members of the first State legislative body, certain designing politicians, who were not directly identified with either of the two great parties, became the balance of power between the opposing factions, and proposed to dictate the election of United States senators and also supreme judges. Jonathan McCarty, a resident of the Half-breed Tract and a citizen of

Lee county, had formerly been a Democratic representative in Congress from Indiana. Abandoning his party in the great political excitement of 1840, he became the head of the Whig electoral ticket of Indiana for General Harrison. The Whigs having fallen into minority in Indiana and McCarty having thus lost his influence he came to Iowa, and was ready to accommodate his political creed to whatever party would promote his individual interests. Being elected from Lee county under these circumstances, he thought he saw a chance to be elected United States senator by the general assembly, and, having the support of those who controlled the balance of power, announced his candidacy. His ticket was derisively named the "possum ticket," and the members who supported him were known as "possum" members. During the electioneering and political excitement connected with the proposed election of United States senators, a member, Nelson King, made the charge of an attempt to bribe him to secure his vote for the Democratic candidates, A. C. Dodge and J. C. Hall.

46. The First Legislative Investigation.—This charge led to an extended investigation, in which nothing was satisfactorily proven, but on account of the tie between the Democrats and Whigs and the hostilities that thus were developed, no election resulted and the legislature adjourned, but not without having actually transacted business worthy of mention. Iowa was not represented in the Senate of the United States for the first two years of her statehood. After the adjournment of the general assembly, the governor appointed the judges of the supreme court,

and started, by so doing, this department of the State government.

47. The Financial Condition.—The first General Assembly found the new State government in debt for Territorial expenditures by $26,000, and with no provision for payment. The members of the constitutional convention had not been paid, and there was no money to pay the salaries of the new State officers or the General Assembly. To meet these emergencies, a loan of $50,000 was authorized, and at once half the possible constitutional indebtedness was contracted. By this means, the new State was started on the high road to honor and prosperity.

48. The Temperance Movement.—At this time also great efforts were made throughout the State for temperance reform. Previous to this time, the counties had been authorized to grant licenses for the retailing of intoxicating liquors. Petitions were sent to this first general assembly from every part of the State asking that some steps be taken to suppress intemperance. The reply to these petitions of the people by the Assembly was in the shape of an act requiring the voters, at the next April election, to express an opinion on the propriety and necessity of licensing retailers of intoxicating liquors. The result of this test of public sentiment proved that every county in the State but two was opposed to the licensing of liquor sellers. By this vote, as provided by the law, the liquor traffic was to be suppressed in the counties that voted against license. But the anticipated effect was not realized, much to the disappointment of the friends of temperance reform, as a surreptitious traffic

sprang up that was difficult to stop, and, despite the large majority, the law began to grow unpopular and intemperance seemed to be continually increasing instead of being abolished, as the vote indicated. After various modifications, the struggle for law and order and temperance has been going on with the people of Iowa ever since these early days, as the majority of the voters have always desired the annihilation of the liquor traffic.

49. School Legislation.—This general assembly also accomplished some school legislation, but through technical irregularities these laws were set aside by the supreme court. The provisions of the law included the election of superintendent of public instruction by the people on the first Monday of April, and also the election of school directors on the second Monday of April. To make this law immediately effective, the assembly provided that "this act shall take effect and be in force from and after its publication." The constitution of the State said that "no law of the general assembly of a public nature shall be in force until the same shall be published and circulated in the several counties of the State by authority. If the general assembly shall deem any law of immediate importance, it may provide that the same shall take effect by publication in newspapers in the State." Since the publication clause of the act did not state that the act would go into effect by being published in the newspapers, the supreme court decided that the secretary of state had no authority to publish the act in the newspapers and then distribute it to the several counties of the State, that there was therefore no law, and

that the school directors elected under said law were not authorized to act.

50. The First Special Session.—The decision of the supreme court regarding the school laws provoked a large demand for something to be done by the State to make schools and education by public authority a legal possibility. To remedy this, the Governor was petitioned to call a special session of the General Assembly. The Democratic politicians also desired a special session for another purpose, as they had reason to think that death had broken the deadlock, and that with the new member elected to fill the vacancy, they could now elect United States senators and supreme judges. Taking these two things together, Governor Briggs was easily induced to call a special session to begin the first Monday of January, 1848. So far as the election of United States senators and supreme judges was concerned, the plan of the Democrats failed, as the Whigs were able to prevent a joint convention being held, and hence official matters remained another year just as they were. At this season, however, some legislation took place that had marked effect upon the future of the State. An act was passed providing for a revision of the laws of the State, and commissioners were appointed to revise and prepare a code of laws. From this came the first authorized collection of statutes, known as the "Code of 1851."

Extra sessions of the State legislature have occurred in 1848, 1856, 1861, 1862, 1897. These were called by the governor under the authority granted by the constitution. In 1873, an adjourned session of the general assembly occurred for the purpose of revising the code.

The first extra session, held in 1848, was specially called to elect

United States senators and State supreme judges. The second extra session of the assembly was called by Governor Grimes in 1856. It met July 2, and adjourned July 16. It was called for the purpose of disposing of the land grants made by the General government for railroad construction and development.

The third extra session was called by Governor Kirkwood, May 15, 1861. It was called for the purpose of making provision for borrowing $800,000 for defense, and for raising regiments of soldiers for the Union army. The session lasted two weeks.

The fourth extra session was called by Governor Kirkwood, September 3, 1862, and adjourned in a week. The real object of this session was to provide means by which the Iowa soldier could cast his vote while he was at the front, assisting in putting down the Rebellion.

The adjourned session of 1873 was not, technically speaking, an extra session, as it was not called by the governor. It met to codify the law, and gave to the State the Code of 1873.

The fifth extra session was called by Governor Drake, January 19, 1897, for the purpose of revising the code and harmonizing the laws of the State, and of providing for the rebuilding of certain State institutions that had been burned, as well as providing a general law for such future contingencies and catastrophies.

51. Railroad Agitation and its Effect.—During this special session of the general assembly, the excitement concerning railroad enterprises struck Iowa, and the greatest interest and enthusiasm prevailed. A public convention was held at Iowa City, which was largely attended, considering the means of transportation at that time. Two projected roads were considered, one from Davenport via Iowa City to Des Moines and Council Bluffs, and another from Dubuque via Iowa City to Keokuk. To aid in these popular enterprises, the general assembly memorialized Congress for a grant of public lands, consisting of alternate sections for a distance of five miles on each side of the proposed railroads, to help develop and construct the roads. Those most active in the whole

matter at first were seeking political preferment rather than the building of railroads, and they took this plan to get the public attention to their large and disinterested motives, but they built better than they knew or intended, as the public mind was caught and aroused thereby, and railroad building became very soon ready for the projector, the capitalist, and the surveyor, and was closely followed by actual construction.

52. The Election of 1848.—The year 1848 gave Iowa plenty of political interest and activity. There were two elections, one in August to elect two members of Congress, the State officers, and the members of the legislature; and one in November to choose electors for President and Vice-president, Lewis Cass and Zachary Taylor being the National candidates of the democratic and whig parties. The contest was regarded as close, and both parties were awake to the necessities of the times. The 'deadlock' of the first General Assembly had intensified the strife, as it gave both parties a reasonable hope that effort might bring victory. Such being the case, no lack of enterprise or enthusiasm was known to exist. Everything stopped that the canvass might be properly made and the issues properly discussed.

53. The Mormon Vote.—Just at this time there was a large settlement of Mormons who had taken up their residence in Iowa, outside of an authorized county. Their location was at Kanesville, now Council Bluffs. Their vote, being represented as from eight hundred to one thousand, was a matter of great consideration. On account of religious controversies, they had abandoned Illinois and had become in-

different to politics, and desired to keep outside of the pale of modern civilization, with which they had so little in common. By their help, the Whigs could carry the first congressional district, and probably the State, and the election of Whig candidates in the western part of the State would in all probability give the Whigs a majority in the legislature. There were personal and religious reasons why the Mormons would be likely to support the Whig ticket, and hence this crisis of affairs greatly disturbed the Democrats. They had, however, control of the State government, and by that means delayed the organization of the new (Pottawattamie) county, to prevent such a possibility occurring. To meet this opposition to the carrying out of popular government, the Whigs had Monroe county organize a township at Kanesville for the assumed election of justices of the peace, and thus obtained the vote of that part of Iowa for the adherents to the Whig ticket. Greatly to their surprise, after victory was thus certainly assured, the clerk of Monroe county declined to receive the poll books and returns from Kanesville on the ground that Monroe county had no right to organize the township, and the Mormon vote was not counted —thus making the Democratic party successful in electing the State, congressional, and electoral tickets. Great was the rejoicing over this narrow escape from defeat, and, through the act of this one officer, several names are now more prominent in Iowa political history, while the clerk's name and deed are practically forgotten.

54. The Second General Assembly (1848).— The first act of the second general assembly was the

election of United States senators. December 2, 1848, Augustus C. Dodge, of Burlington, and George W. Jones, of Dubuque, were chosen to these most important positions. On the 26th of December, they took their seats in the United States Senate at Washington, D. C. In accordance with custom, they drew lots to see which one would have the long term and which one the short term. Senator Dodge drew the short term, expiring March 4, 1849. As soon as the general assembly learned this, a second joint convention was held, and Senator Dodge was re-elected for the coming six years without opposition.

QUESTIONS AND TOPICS.

1. How does a territory become a State? What is a constitutional convention? Rights of congress as to boundaries of new States? Rights of the people as to admission to the Union?

2. Why were the people opposed to banks and corporations?

3. What was the effect of the hard times?

4. How is a State election conducted! What were the great political parties at this time? In what did they differ?

5. What were the temperance views of the Iowa people at the beginning?

6. Who were the Mormons? Give a brief account of them?

CHAPTER VI

THE TRANSITION PERIOD IN ORGANIZATION AND LEGISLATION: 1854–1857

55. A Period of Organization.—The times represented by 1848 to 1857 were devoted to the work of organizing, developing, and establishing the new State. These were great years for emigration. Large delegations from the States east as well as from foreign countries came and rapidly filled up the vacant prairies. These settlers were ambitious, enterprising, progressive young people, anxious to make a place for themselves in the world, and ready to perform the necessary labor to accomplish the desired end. The constitution interfered with internal improvements by its restrictions concerning the organization and management of corporations, while the entire prohibition of banks gave the State a currency obtained from other States, that was as fradulent and as treacherous as anything could be. Iowa became the place in which to unload all this worthless currency of neighboring States, and there was no means of defense, as there were no banks of her own to which her citizens could come for relief. These days had been speculation-wild, and with the financial crisis of 1857, large numbers of the banks failed, and the holders of this worthless currency found themselves to be great losers. One other thing added to the general distress; there being no banks in the ordinary sense, and as the

people had to do business in some way, a large number of firms became in fact private banks, and had large credits from the people. With the stress of the times, these business houses were many of them compelled to close up and were bankrupt, so that very hard times came upon the people.

56. The Economical Management of These Times.—The State government was started on an economical basis; no office-holder was privileged to get wealth at the expense of the people. The members of the general assembly received each two dollars a day for the first fifty days of the session, and one dollar a day thereafter. The sessions were to be biennial, not annual as in Territorial times. The salaries of the state officers were limited for the first ten years as follows: Governor, $1,000 per annum; secretary of state, $500; treasurer of state, $400; auditor of state, $600; judges of supreme court, $1,000 each. Judging from the history of these days and the talent that filled the public offices, there does not seem to have been any discouragement to the best talent seeking these positions. During the first ten years of the State's history, none of these officers were ever known to receive bribes or to steal one dollar of the public money. At the time of the organization of the State, the population of the State was determined, by the census of 1847, to have been 116,651.

57. The Spirit of Speculation.—The result of so much land for purchase, and the proposed development of so many railroads, led to a spirit of speculation that was very prevalent in 1856. One

of the most injurious effects came from the purchase and entry of great bodies of government land within the State by non-residents. This land was held for speculation and placed beyond the reach of actual settlers for many years. From no other one cause did Iowa suffer more than this short-sighted policy of the Federal government in selling lands within her borders, as the speculators profited by the settlers' labor and enterprise, and simply waited the time to come when they could sell their investments at a greatly increased price. The National economy of statesmen should have been more to develop "homes for men and the seats of empire," rather than to increase the wealth of the speculator who had no interest in the welfare of the State. A single regiment of Iowa men in 1861 was worth more to the Nation than all the money the government ever obtained from the toil and sweat of the settlers in the era of speculation. The crash of 1857 put a stop to this speculation, and the taxes imposed upon the non-resident in building school houses and other public buildings made the business of land-holding even as a speculation an undesirable investment.

58. The State University of Iowa.—The second general assembly also decided to establish a State university, and, to insure its support, to dispose of the two townships of land given by Congress for that purpose. The main institution was located at Iowa City. One branch was to be at Dubuque and one at Fairfield, while normal schools were also to be established at Andrew, Oskaloosa, and Mt. Pleasant, respectively. It is probable that no other kind of a

founding act could have been passed, since self-interest had to be more or less consulted, and by this arrangement every part of the State considered that its local interests had been carefully and conscientiously regarded. There was a consequent delay in carrying out this legislative plan for higher education, but the people were thus preliminarily educated for what was afterward to follow. Oskaloosa and Andrew erected buildings, and local interest began to get ready for the opening of the schools, but in the meantime better counsels prevailed, this policy of scattering the schools was repealed, and all the funds were applied to the main institution at Iowa City.

59. School Legislation.—Under the developed conditions and the increase of population, the State had outgrown the school system that had been provided, and the public demand became quite general for a more useful system of organization. This reached such a condition that in 1853 a law was passed extending the power of the school districts and increasing the influence of education among the people. The city of Muscatine led in this movement. George B. Dennison, then principal of schools in that city, prepared a bill specially for that school district and asked that a charter be given Muscatine with these powers. The proposed law was so well put and so happily prepared that instead of giving it to Muscatine alone, it was passed as a general law for the entire State. These were the first provisions for public schools in Iowa, yet they were not yet free schools. In May, 1851, the first graded school in Iowa was opened at Muscatine. The rate system prevailed, and

people paid tuition for the support of the teacher, and coöperation among the people in the maintenance of schools had yet only gone as far as the building of school houses. December 9, 1854, Governor Grimes in his message recommended the adoption of the tax system, whereby teachers and contingent expenses were to be paid by a tax levied upon the assessed property of the districts. While his suggestions received large attention, and were considered with much favor, yet this plan was not adopted and did not take effect until 1857, at the close of Governor Grimes' administration—the time of the beginning of the school system at present prevailing in the State of Iowa.

60. The Hungarians in Iowa.—Previous to 1859, civil war had been in progress in the province of Hungary, under the leadership of Louis Kossuth. The Hungarians made great effort to throw off the Austrian yoke and establish a free government. The people of the United States watched this struggle with a great deal of solicitude. When Austria, with the help of Russia, succeeded in subduing the rebellion, many of the Hungarians were compelled to flee from their country. A large party of these refugees, escaping from the vengeance of the Austrian government, came to the United States and settled in Iowa, on Grand river, in the southern part of Decatur county. From the number that came there, it was supposed that they would build a large town and establish an extensive settlement. Always in sympathy with the oppressed, the people of Iowa gave them a hearty welcome, and the general assembly adopted a memorial to Congress

to have the United States make a donation of public lands for their benefit, and thus give them a home with the hospitable welcome already accorded. The prospects for this being done were excellent, as the President witheld the lands from sale, but the winter that followed was so much colder than they were accustomed to in their native country, and besides since they were by occupation accustomed chiefly to grape culture, they became discouraged and abandoned the Iowa settlement, and removed to Texas.

61. The Great Seals of Iowa.—The use of a seal to give legal authority to official and governmental papers has long been a custom. For the attesting of all papers issued by the governor, the great seal is used by the secretary of state in countersigning all proclamations and commissions issued by the State. Iowa has had two great seals, differing in a marked way as to design. The first was used during the Territorial times, and the design consisted of an eagle bearing in its beak an Indian arrow, and clutching in its talons the unstrung bow. This simple seal was provided by the first Territorial secretary, William B. Conway, at the request of the legislative council, and was adopted by that body November 23, 1838. This design is popular and is still admired by many good judges of this kind of art. It afterwards appeared on the State geological reports, and was also placed on the Iowa National bank notes furnished by the government

to Iowa banks. This original seal was lost in the removal of the State property from Iowa City to Des Moines. The second seal was authorized by law, February 25, 1847. It was intended to represent civilization, liberty, industry, progress, and valor. The design was prescribed by law as follows: "It shall be two inches in diameter, and have engraved around its edge the words, 'The Great Seal of the State of Iowa.' It shall consist of a sheaf and field of standing wheat, with a sickle and other farming utensils, on the left side near the bottom; a lead furnace and pile of pig lead on the right side; the citizen soldier, with a plow in his rear, supporting the American flag and liberty cap with his right hand, and his gun with his left in the centre and near the bottom; the Mississippi river in the rear of the whole with the steamer *Iowa* under way; an eagle near the upper edge holding in his beak a scroll with the following inscription upon it: 'Our liberties we prize and our rights we will maintain.'" With such explicit orders, the artist had little to do with the design, except to conform to law. The ingenuity of skill and cunning has been very severely taxed to place so much upon so small a space. Because of its complexity of design, the coat of arms thus adopted is but little used by the people of Iowa, and has never had a chance, therefore, to be either popular or appreciated as has been the case with those adopted by many other States.

NOTE.—The census of 1854 gave the first indication of the rising tide of immigration, and also betrayed, through its accounting for the sources of this population, that there were material modifications in progress that would eventually change the political sentiments and policies of the State. The earliest settlers had come from southern

Ohio, Indiana, and Illinois, and also from the more northerly Southern States. This accounts for the political tendencies of the early State policies. The next people came in large numbers from Pennsylvania, and after the failure of the revolutionary movements in Europe in 1848, many of the people of those countries came to the United States, and Iowa attracted, for a time, a large proportion of the agriculturalists. Finally the majority of the immigrants came from northern Ohio, from New York, and from New England, while Pennsylvania and Europe still continued a fair proportion. The story of the origin and modification, through immigration, of the Iowa people answers many inquiries that will arise concerning social and political progress, moral reforms, and permanent changes in public policy. The character and the training of a people are the proper explanation for the chief differences that exist between states, both as to fundamental theories and actual practice. The year 1854 united Lake Michigan and the Mississippi river by the completion of a railroad. Iowa at once began similar public improvements and every train westward carried its contingent of immigrants to still add to the growing population of energetic and enterprising citizens. The census of 1856 and likewise of 1860 each tells a remarkable story of increase of population, of development of resources, and of multiplication of wealth.

QUESTIONS AND TOPICS.

1. How are public lands sold? When could people settle upon the public lands? What is a squatter? What is a government patent? Difference between warranty deeds and government patents?

2. What is the use of a seal? Origin of the use? Compare the Iowa territorial seal and the seal of the United States?

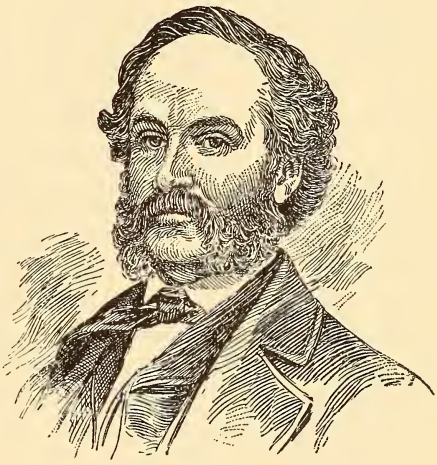
CHAPTER VII

THE REPUBLICAN PERIOD OF STATE CONTROL— 1857–

62. The Change in State Policy. — From the beginning of Territorial government in 1838 to the year 1854, the Democratic party was in power, controlling all the legislation and dictating the policy of Constitution and laws. With the advent of a new school of politics, represented by the supporters of Governor James W. Grimes and the Republican party, there came a growing conviction that a new constitution, more in accord with modern notions, should be framed. Under the Democratic party there was no National money except silver and gold, called by the supporters of this policy, "the money of the Constitution." All other currency of any kind was left to the several States to provide, the Democratic party believing quite thoroughly in *state rights*. For the reasons heretofore given, the Democratic party was absolutely opposed to having any banks in the State, and it was likewise much opposed to any policy that would organize any permanent corporations that might have, through long continuance, the power to interfere with the public good. Hence, during these years there was no chance for anything of such kind to be organized.

63. Other Things that Hastened the Change.— In addition, the Democratic party had, in fact, been very

strenuous in legislation that prohibited and restricted the liquor traffic. In season and out of season, its policy had been such that it arrayed against it those voters of more liberal view, who preferred different customs, and whose habits made them desire a granting of favors to this interdicted traffic. The hard times, that were beginning to be felt in the whole country, together with the great controversy regarding the slavery question that was attracting so much attention at this period of history, added to these matters above stated, led to the defeat of the Democratic party in 1854, and to the victory of the Republicans, in the electing of James W. Grimes as Governor and a General Assembly in harmony with him, that began to legislate to reorganize the State government in accordance with the views the party represented. The practical result of the prohibition of any system of banking in the State was to flood Iowa with every species of "wild cat" currency. The circulating medium of the people was made up in part of the free-bank paper of Illinois and Indiana. In addition to this, paper was being issued



JAMES W. GRIMES.

by Iowa brokers who had obtained so-called bank charters from the Territorial legislature of Nebraska, and had their pretended headquarters at Omaha and Florence. This current money was also well assisted with the bills from other States, generally such as had the best reputation where they were least known. This paper money was all at two per cent., and some of it ten to fifteen per cent. discount. Every man who was not an expert in detecting counterfeit bills, and who was not posted in the history of all forms of banking institutions, did business at his peril.

64. The Third Constitutional Convention.— Provision was therefore made by the general assembly for a constitutional convention to remedy these defects, said to exist, in the fundamental law of the State and to make such modifications as would more nearly conform with the new spirit of progress and of improvement that came with the change of State policy. This convention assembled at Iowa City, January 19, 1857, and, completing its work, adjourned March 5, 1857. There were quite a number of very important changes and amendments made in the Constitution of the State by this Convention, but only the more radical ones can be mentioned here.

1. Provision was made that every tenth year after 1860, the people should decide, at the time of the regular election, whether a new constitutional convention should be called.

2. Provision was made for a Lieutenant Governor to be the President of the Senate, and to fill any vacancy in the office of Governor that might be caused by the death, resignation or other disability of that officer.

3. It changed the period of taking the State census to every ten years, instead of every two years as under the first constitution.

4. It changed the prosecuting attorney as elected by each county, to a district attorney elected by each judicial district.

5. It changed the selection of Supreme Court Judges from the General Assembly to the people at the regular election of other State officers.

6. It changed the length of term of the Governor from four years to two years.

7. It provided for an attorney general to be elected by the people.

8. It increased the limitation of State indebtedness from $100,000 to $250,000.

9. It provided for the protection of the permanent school fund, by making the State responsible for every dollar of the same, so that any losses became a permanent funded debt until they were paid.

10. It provided for the more liberal treatment of corporations, organized for pecuniary profit.

11. It permitted the General Assembly to organize a State bank, to be founded on an actual specie basis.

12. It provided for a general banking law, under suitable restrictions.

13. It organized a State Board of Education to have charge of the educational interests of the State, that should exist until 1863, when reorganization or abolishment was permitted.

14. It located the permanent seat of State government at Des Moines, and of the State University at Iowa City.

This Constitution was submitted to the people for approval, and was adopted by the popular vote August 3, 1857. Following this, Governor Grimes, by proclamation issued September 3, 1857, declared the result and announced the New Constitution as the supreme law of the land.

65. Railroad Legislation.—As a result of the interest in railroad building, developed by the convention held at Iowa City in 1848, such enterprises were started, though the Constitution of 1846 was not friendly to corporations organized for pecuniary profit. The Congress of the United States became interested about the same time and began making large grants of land to Western states, to assist such public improvements. Hence, in 1854, the first railroad in Iowa was built from Davenport to Iowa City, a distance of fifty-five miles, the first rail having been laid in Davenport in May of that year, at or near high-water mark on the banks of the Mississippi river. The first locomotive in Iowa was landed at Davenport in July, and was called the "Antoine Le Claire," after the man who had been the "First citizen of Davenport" in the pioneer days. This road was then called the Mississippi and Missouri River Railroad, but is now known by the name Chicago, Rock Island and Pacific Railway.

66. Effect of the New Policy.—With the advent of a new political policy toward corporations organized for pecuniary profit by their stockholders, and with a modification in the Constitution as well as more liberality in the laws, and with the large land grants to be used in building railroads, this State became the center

of great activity in the construction of such public improvements. Railway construction companies were organized to prosecute the work and the General Assembly distributed the lands to them on such conditions as to prepare the way for State control.

67. The First Land Grants.—The first Congressional land grant, approved May, 1856, was for the encouragement of the building of four railroads: (1.) From Burlington to the Missouri river, near the mouth of the Platte river. (2.) From Davenport via Iowa City and Des Moines to Council Bluffs. (3.) From Lyons, north-westerly to a point of intersection with the main line of the so-called "Iowa Central Air Line Railroad," near Maquoketa and thence on said main line, running as nearly as practicable on the 42d. parallel across the State to the Missouri river. (4.) From Dubuque to a point on the Missouri river at or near Sioux City. This land grant conferred upon the State the odd numbered sections six miles in width on each side of the railroads, so projected, to be used as help in the construction. A special session of the General Assembly occurred in July, 1856, and on the 14th. of that month the grant was accepted by legislative act and at once regranted to the proposed roads. All these roads, with the exception of the "Iowa Central Air Line," accepted the grants and began construction, and in the time required, completed the roads and opened them to traffic. The lands not accepted were afterwards granted with the permission of Congress, to the Cedar Rapids and Missouri River Railroad. These roads when constructed, after a time passed into the control of the Chicago, Rock Island and Pacific Rail-

way, Chicago, Burlington and Quincy Railway, Chicago and Northwestern Railway, and Illinois Central Railway. Again on the 12th of May, 1864, Congress granted lands to the State to aid in building a railroad from McGregor to Sioux City. This grant conferred upon the State every alternate section ten miles on each side of the line.

68. The Des Moines River Land Grant.—By an act approved August 8, 1846, Congress had already granted to Iowa the alternate sections of land on each side of the Des Moines river for six miles, for the purpose of improving the navigation of that river from its mouth to the Raccoon Fork, at Des Moines. In 1847 Iowa organized a board of public works, and began constructing dams and locks at large expense at four or five important points. Finally the grant was so changed as to allow the State to transfer its interests to the Des Moines Navigation and Railroad Company—a corporation that was authorized to develop and control this internal water-way, and also to build a railroad in case that might prove more advisable. The State had already disposed of most of the lands below the Raccoon Forks, and, as very soon there were adverse rulings regarding the United States having granted the lands north of the Forks, the Company effected a compromise by which it accepted all the lands certified to the State prior to 1857 and paid the State $20,000 cash in addition to what had already been expended by the Company, and abandoned the work, leaving it as the property of the State. This expensive venture proved to be entirely useless, and in 1862 Congress settled the original question perma-

nently by naming the extent of the grant as the northern boundary of Iowa, and the General Assembly, then, granted these lands to the Des Moines Valley Railroad Company, for the purpose of building a railway up the valley of the Des Moines river.

69. What the United States did for Iowa.—There were, therefore, these land-grant railroads, which received from the United States the great donation of 4,394,400 acres of the best land of this rich State, and by whose building the other lands were opened and settled with a rapidity that had never before been known. These land grants were an important factor in the civil development of the State of Iowa, and had much to do with the great progress that came so suddenly to a new and unsettled country—without which it would have been many years, before the great and extensive prairies, without woodland for miles, would have been subdued by advancing civilization. The State distributed these lands to the following railroads:

Burlington and Missouri River	292,806 acres.
Mississippi and Missouri River	482,374 acres,
Cedar Rapids and Missouri River	735,997 acres.
Dubuque and Sioux City	1,232,359 acres.
McGregor and Sioux City	137,572 acres.
Des Moines Valley	1,105,381 acres.
Sioux City and St. Paul	407,910 acres.

70. Founding State Institutions.—When the Republican administration came into power, it found the State with the debt of $50,000 borrowed at the organization of the State government in 1846. The previous policy had observed the most rigid economy, but had made no provision for paying this debt, and

had done nothing to provide for the insane, the deaf, the blind, or the feeble-minded. Temporary schools for the deaf and the blind had been organized, but, save the old stone State House at Iowa City and an inadequate penitentiary at Fort Madison, the State was yet without public buildings. In 1856 and 1858, large appropriations were made for the erection of public buildings, and the support of the unfortunate classes, and a loan of $200,000 was authorized. The contest, at the election of 1859, was a spirited one. Samuel J. Kirkwood was nominated for Governor by the Republicans, and Augustus C. Dodge, then just returned home from a mission to Spain, was nominated by the Democrats. There was the slavery question, the charge of extravagance in State management, and the size and the extent of the insane hospital at Mt. Pleasant, that made the controversy interesting. Kirkwood was elected by a good majority.

71. The State Banking System.—The New Constitution also gave birth to the State Bank of Iowa, which was perfected by the law of 1858, at the first session of the General Assembly that was held at the new capital, Des Moines. This law gave Iowa good money and a secure home-banking system on a specie basis, from which no financial disasters came during its continuance. With the establishment of the National Banking System in 1865,* the State Bank of Iowa was closed, as National bank currency legally† took the place of all paper money issued by the states.

* Original act passed Congress February 25, 1863.

† Amended act taxing State banks 10 per cent. on circulation passed Congress March 3, 1865.

Since that time other banks called State banks have been provided by law, but they are limited in function to accepting deposits and doing a general banking business and do not issue any currency. These banks are now quite generally established in the business centers of the State, and are regarded as equivalent in security and public benefit to National banks, though enjoying only a part of their functions in the banking world. When the National Banking System was established, there were 10,000 different kinds of bank notes in circulation in the then thirty-four States of the Union.

72. Temperance Legislation.—Iowa, even as a Territory, passed prohibitory and restrictive legislation concerning the sale of, and the traffic in intoxicating liquors, and has never since that time abandoned the principle involved. The struggle for sobriety, total abstinence, and legal restraint of the liquor traffic has been continuous. In 1858 there was a political movement that legalized the sale of ale, wine, and beer, and to some extent local option and license asserted themselves as a State method of dealing with the drink traffic; but there was continual and heated controversy and frequent prosecution of violators of the laws. The purpose of the Law of 1858 was to allow the weaker liquors, like ale, wine, and beer to be sold, but also to absolutely prohibit the sale of stronger drinks, like brandy, whisky, and rum. This system, however, did not succeed, to the satisfaction of the people of the State, because the established saloons, quite generally, not only sold the permitted liquors, but also violated the law and sold prohibited liquors. This led to so much political and legal controversy that it kept the

question perpetually in politics and in the courts in the centers of population—the cities and towns,—and finally resulted in a proposition for a Constitutional Amendment that passed successively two general assemblies and received 30,000 majority in its favor on the part of the people, at a non-partisan election in 1882. Through a clerical error, made by the general assembly at one passage, the amendment became invalid, the supreme court declaring the procedure of adoption not properly obeyed. But the sentiment of the people was so pronounced, and the public pressure so strong that the next general assembly (1884), passed a prohibitory law and gave the State by statute, what was sought by amendment to the constitution. Then came the application of the law, the liquor traffic resisting every point until the supreme court had established such act as constitutional in every respect. Difficulties in certain counties, cities, and towns made the local enforcement of this law practically impossible, so that a new law was passed March 29, 1894, permitting such cities and towns as desired saloons to establish them by petition. If the per centage of voters that petitioned was sufficient as required by law, the so-called "mulct law" prevailed in said community, until prohibition was again restored by a large enough percentage of voters again petitioning for its restoration. There have been few problems in civil government that have received as much attention from Iowa legislators, politicians, and people as has the control and suppression of the liquor traffic during the first fifty years of Iowa history.

CHAPTER VIII

IOWA IN THE DAYS OF CONTROVERSY AND WAR—1859–1865

73. The Slavery Question.—By the Missouri Compromise, Iowa became a State in which slavery "was forever prohibited," yet at one time there were a few slaves on this soil who were sold by their masters to traders who took them South. This fact of the prohibition of slavery caused the settlers that came to Iowa to be chiefly opposed to that institution, and they were therefore hostile to its extension on any conditions. December 9, 1854, Governor Grimes gave in his message the memorable words that struck the key note of the political history of the State for many years: "It becomes the state of Iowa, the only free state of the Missouri Compromise, to let the world know that she values the blessings that Compromise has secured for her, and know that she will never consent to become a party to the nationalization of slavery." This was Iowa's answer to the proposition made in Congress in 1854 to repeal the Missouri Compromise. In the midst of the great political agitation that existed in the Union, Mr. Grimes was nominated for Governor, and being supported by both Whigs and Free-soilers, he conducted a spirited and successful campaign and was elected by 2,468 majority. An entire change at once began in the political history of Iowa, and soon a like change followed in the majority of the states in the

Union. Mr. Grimes' campaign and election was the first very prominent large movement toward the organization of the Republican party. Six years later Abraham Lincoln was elected President of the United States, and the entire governmental policy of the Great Republic as regards slavery and also as regards tariff taxation was changed.

74. Controversies Over Suffrage. — The new Constitution opened up the controversy concerning suffrage by providing for a vote of the people on striking the word "white" out of the suffrage clause. There were already quite a number of negroes in Iowa, and this question of enfranchising them was one of the first discussions of the kind that occurred in the United States. Since the organization of the State there had been a law upon the statute books providing that no mulatto, negro, or Indian should be a competent witness in any suit or proceedings to which a white man was a party. The general assembly of 1856-57 repealed this law and the new constitution contained a clause forbidding such disqualification in the future. The word "white" was retained in the constitution, but the repeal of the "color line" law and the proposition to remove the color line from suffrage, together with a law that provided in a broad sense for the education of "all youth in the State" through a system of common schools, made the political excitement intense, since fundamental constitutional problems were being considered, and a radical change seemed promised, unless it could be defeated at the polls. The Democrats made a bold attack upon the Republican party because of the repeal of the "black laws" and

the provision for negro education, and made a strong and successful appeal to the feeling of race prejudice which still prevailed in the State, as was proven by the defeat of the proposition to strike out then, the word "white" from the Constitution of 1857. The result was, however, a victory for the Republican party, as the vote of Iowa since that time has almost universally supported the policies of that party. The word "white" was afterward, in 1868, stricken out of the Constitution by the approval of the people at a general election.

75. The Republican Party Supreme.—In January, 1858, the general assembly met for the first time at Des Moines. Political party supremacy was gradually slipping from the hands of the Democrats. Already in 1855, James Harlan had been elected United States senator by the general assembly, and Augustus C. Dodge, representing the old regime, was retired. The assembly of 1858 completed this policy by electing James W. Grimes United States senator and retiring George W. Jones, who had been associated with Iowa politics from the beginning of its history.

76. The Campaign of 1860.—The presidential campaign of 1860 was a remarkable one for Iowa, and helped make the civil history of the State. The fact that civil war seemed imminent, in case of Abraham Lincoln's election to the presidency of the United States was well understood and considered. There was a disposition, however, to consider and decide these issues, uninfluenced by any threat of violence or civil war. Already in 1851, the general assembly, by joint resolution, had declared that the state of Iowa was "bound to maintain the union of these States by

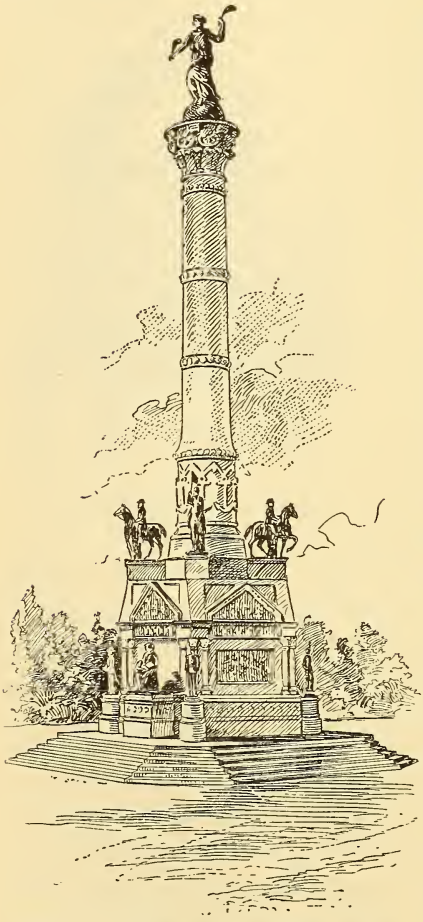
all the means in her power." The same year the State furnished a block of marble for the Washington Monument, and by order of the general assembly, inscribed upon it the following sentiment: "Iowa: Her affections, like the rivers of her borders, flow to an Inseparable Union." No State in the Union had more vital interest in National unity than the people of Iowa. Her population were representatives of the older states, both North and South. All were immigrants bound to these older communities by the ties of blood and fond recollections of early days. Her geographical position was such that a dismemberment of the Union was a matter of serious concern. The Mississippi river was the highway for her people to market their products, and for the navigation of this nature-highway to pass into the control of a foreign government was to isolate Iowa from the commerce of the world. In secession and its results, the State of Iowa could see nothing for her people but confusion, anarchy, and utter destruction of nationality. Hence when the National flag was fired upon at Fort Sumter in 1861, party lines gave way, party spirit was hushed, and the cause of the common country became supreme in the affection of the whole people.

77. The Meeting of the Crisis.—Peculiarly fortunate was the State at this crisis, in having a truly representative man as chief executive in the person of Samuel J. Kirkwood. He was indeed worthy and able to organize and direct the energies of the people. Within thirty days after the date of the President's proclamation calling for troops, the First Iowa Regiment was mustered into the service of the United

States, a second regiment was in camp ready for service, and the general assembly was in special session, pledging by joint resolution every resource of men and money to the National cause. The constitution of the State limited the State debt to $250,000, except debts contracted to "repel invasion, suppress insurrection, or defend the State in war." This assembly authorized a loan of $800,000, if it were necessary, for a war and defense fund, to be expended in organizing, arming, equipping and subsisting the militia of the State, to meet the present and future requisitions of the President. Those in power looked to the spirit rather than to the letter of the constitution, and acted upon the theory that to preserve the Nation was to preserve the State, and that to prevent invasion was the most effectual way of repelling it. Only $300,000 of this loan was ever made, and these bonds were purchased and held chiefly by Iowa people. "A monument to the heroism of the soldiers and sailors of 1861-65 was erected at the capital in 1895. The money expended, $150,000, was obtained from the refunded national direct tax of August 5, 1861." (283, p. 260.)

SAMUEL J. KIRKWOOD.

78. The Effect of the War.—What terrible days those were to the people of Iowa! Their thoughts and energies were intent upon the war. The State was simply a recruiting station for the army. The railroads and express lines were carrying away the strong and the vigorous and returning, to the desolate homes, the bodies of the cherished dead. The social life of the people was connected with meetings to raise means for sanitary and hospital supplies. Sociables, concerts, festivals, all had one object — to raise money for the Christian and Sanitary Commissions. The General Assembly did all in its power to meet the emergencies. Enlistments were



IOWA SOLDIERS' AND SAILORS' MONUMENT.

encouraged and everything done to protect the soldier in the field and his family at home. Laws were passed that suspended all suits against soldiers in the service, and all suits of attachment or execution against their property. County boards of supervisors were authorized and commanded to vote bounties for enlistments and pecuniary aid to the needy families of those in the service. To the people, the maintenance of slavery meant the continuance of the support of the Southern cause, and was the very strength of the Rebellion. Therefore the belief prevailed that when slavery ended the War would end, and the Emancipation Proclamation was received with great satisfaction, as meaning the saving of fathers', brothers', sons', and lovers' lives, and, at the same time, gave triumph to liberty and freedom through mercy and justice.

79. Iowa in the War of the Rebellion. — In the great War of 1861-65, Iowa sent to the front to defend and support the National Government, in putting down the Rebellion 78,000 men. Of these, nine regiments were cavalry and forty-eight were infantry. In addition there were four batteries, one regiment of colored infantry, and a few sailors. War always plays havoc with human life, whether in camp or in the field. When the war closed in 1865, 12,368 were dead, 8,848 had been wounded in battle, and 9,987 were discharged for wounds received in battle or for ruined health. Iowa men won rank and distinction in the service. The record shows the names of four major-generals, thirteen brevet major-generals, six brigadier-generals, and thirty-six brevet brigadier-generals. The most signal events that the Iowa soldiers were

connected with were the battles of Wilson's Creek, Belmont, Pea Ridge, Shiloh, Iuka, Corinth, Prairie Grove, Helena, Missionary Ridge, Jenkins's Ferry, Winchester, the siege of Vicksburg, the storming of Fort Donelson, and the March to the Sea. The War of the Rebellion was one of the most mighty conflicts that has ever occurred. Of a population of less than 700,000 people, Iowa sent nearly 80,000 to the War. Every other able-bodied man in the State was in the ranks of the army of the United States. It was a fearful price to pay for honor and renown, but it was cheerfully given in valor, in faith, and in sacrifice that this Great Republic might live, and that liberty and freedom might be the perpetual heritage of the generations then unborn, but now in the schools and enjoying the great privileges thus bought with blood and treasure.

80. The Sioux Indian and the Settler.—During the intense political controversies that were pending in the Nation, little attention was given to the Indian outrages on the frontier. These were so small and so unimportant, as compared to the great struggle going on in the Nation, that public interest was not aroused to any extent. So much so was this true, that no attempt was ever made by the Government to bring to justice the roving band of Sioux Indian outlaws, who ruthlessly and brutally murdered the settlers in northern Iowa in 1857. The soil of Iowa had been singularly free from Indian outbreaks, the treaties for the removal of the Indians being faithfully kept. Before Territorial times, the pioneers of the Mississippi Valley had an experience in the Black Hawk war that

gave them an insight into the savage character of the Indian on the war path. Later, during the Rebellion in 1862, the Sioux war in Minnesota, that cost the lives of 1,000 white settlers, and that would have been regarded as a most serious and terrible outbreak, lost its prominence because of the more terrible civil conflict even then in progress in the Union. Both of these Indian wars had causes in injustice and in failure of the Government to promptly comply with treaties and also in seeming invasion of rights and guarantees.

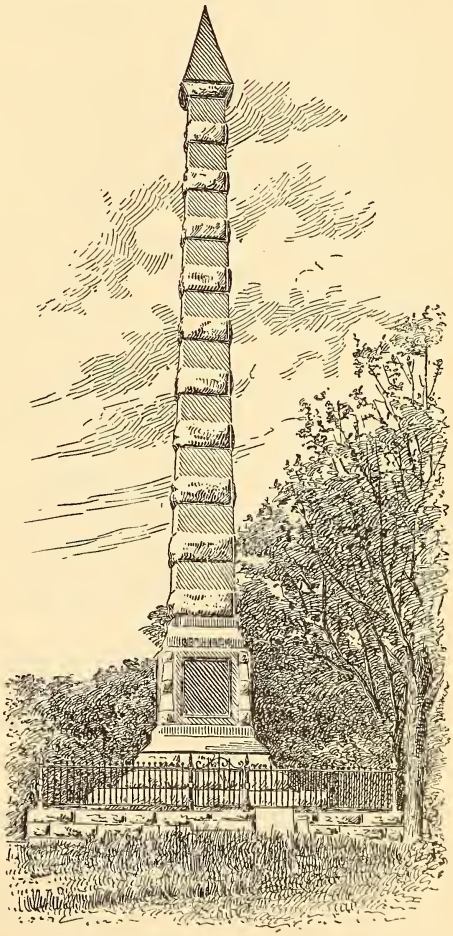
81. The Spirit Lake Massacre.—The massacre that occurred in 1857 at Spirit Lake cannot be explained by any wrong on the part of the white man, as its perpetrators were a lawless, reckless band of thieves, robbers, and murderers. In this massacre more than fifty white people lost their lives, at the very time when they were kindly ministering to the wants of these needy but treacherous savages. This massacre was carried out by an outlaw band of Sioux Indians, who were so cruel and so criminal that they were not even respected by the other more honorable bands of the tribe, and hence kept themselves farther away from the pale of civilization and made their home in South Dakota, where a white man had never trespassed. They were the worst band of the Sioux tribe, and were known by their chief as Ink-pa-du-ta's* band. They had attracted to themselves all the roughs and outlaws of the whole tribe, and became thereby the terror of all exposed settlements.

82. The Outrages Committed.—The winter of 1856-57 had been unusually cold and this band of

*The Scarlet Point.

outlaws found it very difficult to exist. Hence they left their inhospitable quarters and drifted into Iowa to subsist off of the settlers by stealing, robbery, and outrage. Being repudiated by the tribe in the treaty of 1851 that was made at Mendota, they had taken no part in that treaty, and were not thus able to share in the grants and the privileges made by the General government. They thus felt that they had a right to get even with the white man, by such incursions in mid winter when the settler was helpless. The scarcity of game and the difficulties they encountered in dealing with the whites, in the more thickly settled communities on the Little Sioux river incensed them. Their stealing and outlawry being resisted, they became more desperate and more bloodthirsty when they came, in their wanderings, into the more sparse settlements. In Buena Vista county, they robbed the houses, shot the cattle, abused the families of the settlers, and threatened them with more dire penalties, if they resisted. In Clay county, their outrages increased in violence and impudence, and in Dickinson county, at Okoboji and Spirit lakes, they entered the homes of the settlers under the guise of friendship, and, after being fed and ministered unto in their distress, they treacherously murdered men, women, and children, saving the lives of none except a few of the younger women, whom they carried away as captives. From Spirit Lake, they proceeded to the little settlement of Springfield on the Des Moines river, but here met resistance, as these settlers were apprised of the result at Okoboji lake and gave them no chance to perpetrate their cruel outrages. A few, however, who relied on the friend-

ship and good will of the savages, paid the penalty with their lives—none that fell into their power being saved. In the meantime, the United States troops at Fort Ridgely and the citizens of Fort Dodge were informed of the terrible fate of the settlers, and notwithstanding the heavy snows, the stormy season, and the raging streams, relief expeditions were sent from both places, and the Indians withdrew to their Dakota wilderness. Nothing was ever done by the United States to redress these grievances and punish these marauders. The State of Minnesota purchased the free-



SPIRIT LAKE MONUMENT.

dom of two of the captives, the others having perished.

83. The Monument.—July 26, 1895, there was dedicated at Spirit Lake a monument erected by the State of Iowa to the memory of the victims who perished there in 1857. It is a granite monument fifty-five feet high, and is of graceful and pleasing proportions. Thus Iowa bore testimony to the brave deeds of the pioneer of civilization, who not only had to contend against the hardships of the wilderness in the struggle for subsistence, but who also sacrificed his life in the attempt to open up the wilderness to the progress and spirit of the times.

QUESTIONS AND TOPICS.

1. Democratic national money? Republican national money? "Wild Cat" currency? State bank paper of 1853?
2. What is a legislative special or extra session? Effect upon the railway corporations as to control by the State through accepting land grants?
3. What was the state banking system of 1858? What are the functions of national banks? Of state banks?
4. What was the Missouri compromise? Who was a "free soiler?"
5. How are amendments made to the State constitution?
6. How are United States Senators elected? How many from each state?
7. When can the state debt legally exceed the constitutional limit?
8. What were "sanitary commissions" during the war?
9. What was Iowa's part in the Great Rebellion? Why was Iowa so decidedly in favor of maintaining the Union?

CHAPTER IX

THE STATE INSTITUTIONS AND SOCIETIES

84. The Policy of the State.—Numerous lines of public work are in charge of the State. These consist: (1) of charities, such as the care and medical treatment of the temporary insane, the reform of the erring, the restraint of the criminal and vicious, the education and training of the unfortunate, and the support of the helpless and indigent; (2) of higher and professional educational institutions that grant an enlarged opportunity to the youth of the State; (3) of the recognition of such societies as are voluntarily organized and maintained for the purpose of advancing the interests of the people in respect to agriculture, horticulture, education, stock breeding, etc.; (4) of the maintaining of boards that control the practice of medicine, the practice of dentistry, the profession of teaching and the dispensing of medicines. There has been much difference of opinion concerning the province of the State regarding these matters. Most of the charities began with movements that depended upon public sympathy and general contributions of money for support, and were afterwards transferred to the State for maintenance and management. Dissatisfaction regarding public health and public interests have led to the establishment of most of the boards of control, while interest in public welfare has caused the encouragement of the public societies that

exist and are engaged in distributing knowledge in reference to progress, improvement, and development.

85. The Penitentiaries.—In the original act that established the Territory of Iowa, provision was made for the National Government to appropriate money for public buildings. From this appropriation came the stone building at Iowa City, now used by the State University, and the penitentiary at Ft. Madison, whose main building was completed in 1841. Iowa was probably the only State in the Union that was provided a penitentiary at National expense. An additional penitentiary, at Anamosa, was erected by convict labor, work beginning in 1872. This institution is now used for first offenders under thirty years of age, for female offenders, and for the criminal insane.

86. The Soldiers' Home.—This institution was completed and opened November 30, 1887, and is for the soldiers and the sailors, residents of Iowa, who are incapable of self-support or of taking care of themselves. Persons who have property, or who draw a pension sufficient to support them, are not admitted as inmates, and those who are granted pensions, or whose health recovers so as to enable them to support themselves, are discharged from the Home.

87. The Hospitals for the Insane.—This State has four hospitals for the insane. The oldest is located at Mt. Pleasant, and was established in 1855, receiving patients for the first time March 6, 1861. The second is located at Independence, and opened for the reception of patients in May, 1873. The third is located at Clarinda, and was opened in 1888. The fourth, at Cherokee, was opened in 1902. All these

institutions are the equals of any such hospitals anywhere in the United States, and are among the greatest and noblest charities of this sympathetic age. Persons are admitted to these State hospitals at the expense of the counties from which they come, and are usually kept until recovery or until it is decided that insanity is permanent; in the latter case they may be kept permanently or may be returned to the care of the counties. About half the counties in the State have hospitals for the insane.

88. The Hospital for Inebriates.—This institution is located at Knoxville. It was originally opened in 1892 as an Industrial Home for the Adult Blind, but that institution was never very largely patronized, and in 1904 the General Assembly changed it into the State Hospital for Inebriates. It is used for the detention, care, and treatment of male inebriates and persons addicted to the use of morphine and other narcotic drugs. Commitments to this institution are made by the district judge. There is a similar Hospital for Female Inebriates at Mt. Pleasant.

89. The College for the Blind.—The College for the Blind was first opened in temporary quarters in Iowa City in 1853. In 1858 provision was made for a permanent institution at Vinton. This institution is a well-appointed school, equaling in amount of apparatus, in thoroughness of instruction, and in fullness of its curriculum, the best public schools in Iowa. Special attention is given to music instruction. Tuition and board in this institution are free to any blind person in the State.

90. The School for the Deaf.—This school for

the care and education of the deaf was first organized in Iowa City in 1855. A permanent building was provided for the institution at Council Bluffs in 1870. It is free to all deaf children of school age that are sound in mind, free from immoral habits and contagious and offensive diseases. It was first called Institution for the Deaf and Dumb, but the name was changed by the twenty-fourth general assembly. Besides a general education, the trades of printing, shoemaking, carpentering, dressmaking, farming, gardening, drawing and painting, household work, plain sewing, and knitting are taught.

91. The Industrial Schools.—These schools were founded and are maintained for the purpose of reforming juvenile offenders, or those who, through lack of proper home control, promise to become criminals. The results of the work done by these schools proves beyond a doubt the possibility to reclaim youth and make good citizens, if they are put under proper control. The age of admission to these schools is from seven to sixteen, at the time when their natures are still susceptible to the influence of kindness, moral training, and proper discipline. These reformatory institutions are therefore conducted on an entirely different plan from prisons or penitentiaries, as the length of sentence is indefinite and encourages reform, and the environment created is more beneficial and more hopeful. The State has therefore combined instruction in common school branches, adapted to ages and advancement, and suitable industrial education, with instruction in morality, the center of the training. There are two of these schools: one at Eldora for

boys, founded in 1868, and one at Mitchellville for girls, founded in 1872.

92. The Institution for the Feebleminded.—Three homes for orphan children, were founded during the War of 1861–65, and maintained by the State until 1876, when, the number of such children having greatly diminished, it was decided to unite these in the present institution at Davenport. This closed the homes at Cedar Falls and Glenwood, which were changed, therefore, into the State Normal School at Cedar Falls, and the Feebleminded Institution at Glenwood. The objects of this institution are to provide special methods of training for children who are deficient in mind, or marked with such peculiarities as to deprive them of the benefits and privileges provided for children with normal faculties. The purpose is to make the children as nearly self-supporting as practicable, and to approach as nearly as possible the actions of normal people. It further aims to provide a home for those who are not susceptible to mental culture, relying wholly upon others to supply their simple wants. In the school department, lessons are imparted in the simple elements of instruction taught in public schools, as well as in the industries suited to their capacities. Girls learn plain and fancy sewing and household work, while boys are detailed to work on the farm or in the garden, in the shoe shop, broom shop, or carpenter shop, and assist in the various departments of the institution. Males are admitted between the ages of five and twenty-one, and females between five and forty-six. Inmates may be dismissed by the board of control; or if there are good

reasons why this should not be done, they may remain permanently.

93. The Soldiers' Orphans' Home.—This institution was opened for the reception of children July 13, 1864. It was first supported by private contributions, but the eleventh general assembly (1866), assumed control of it, and provided for its management and permanent location at Davenport. In 1876 it became the only home for soldiers' orphans in Iowa, by receiving the children that had been in the State Homes at Cedar Falls and Glenwood. Two classes of children are now received; first, soldiers' orphans entirely at the expense of the State; second, county orphans or indigent children who are sent by counties, the expense being borne by the counties so sending them. The purpose of the Home is educational and industrial. There is a good elementary school maintained the entire school year, and the children also learn to work at common industrial pursuits. The children are placed in good homes as opportunity offers, and they are looked after by officers and recalled, if the agreements are not faithfully carried out. The intention is, to provide for all homeless and indigent children, and not allow them to be sent to county poor houses and other places of detention and degradation. The policy is also to locate the children in good homes as soon as possible, instead of keeping them at the expense of the State.

The institutions described in §§ 85–93 were at first controlled by separate boards of trustees; but they are now under the charge of the Board of Control of State Institutions. See § 125.

94. The State Agricultural College.—Iowa early became interested in agricultural education. Already in 1858, at that memorable assembly when so much progress in public institutions originated, the State Agricultural College was established, including an experimental farm. In 1860, the necessary land was purchased in Story county, and suitable buildings were erected. In 1864 and 1866, appropriations were made to erect a college building, and in 1868 the building was completed and the college opened as the law stated "to advance and conserve the interests of agriculture and the mechanic arts." The State appropriations in support of this institution have been very large. The movement for this kind of education was encouraged by the United States Congress, July 30, 1862, by making an appropriation to the several States of the Union of an amount of the public lands, equal to 30,000 acres for each of their senators and representatives in Congress, the proceeds of which should be devoted to maintaining a college in which the leading object should be to teach such branches of learning as related to agriculture and the mechanic arts. In 1890 and again in 1907 bills for the more complete endowment and support of these colleges were passed by Congress. They appropriated amounts gradually increasing from $15,000 for the year 1890 to $50,000 for the year 1912; the annual amount thereafter to be paid each State and Territory to be $50,000, the same to be applied only to instruction in agriculture, the mechanic arts, the English language, and the various branches of mathematical, physical, natural, and economic science, with special reference to their application to

the industries of life and the facilities for such instruction.

95. The State University.—This institution is supported by a permanent endowment obtained from a Congressional land grant, by tuition fees, and by biennial appropriations made by the Legislature. It first opened March, 1855, but was closed for lack of funds from 1858 to 1860. In 1860 work was again permanently resumed. In the beginning the attendance consisted chiefly of students in the normal and preparatory departments, but these departments were long since abolished and, at present, the departments maintained consist of the collegiate, the law, the medical, the homeopathic-medical, the dental, the pharmaceutical, and the scientific. The permanent endowment is small, because the legislature was forced by public opinion to put the land grant upon the market at too early a day to realize much of a sum of money. Eighteen thousand acres of the grant were sold at the nominal price of $3.27 an acre and that, at the time, when most of the Government land had been sold at $1.25 an acre, and even as low as eighty-five cents an acre to purchasers with land warrants. Hence the support and development funds of the institution have chiefly come from temporary legislative appropriations. The University is governed by a Board of Regents, consisting of one member from each Congressional district and with *ex-officiis* members consisting of the Governor and the Superintendent of Public Instruction. The influence of the University on general public education has been marked by the best effects, and the high schools have been greatly encouraged and assisted by

its recognition of them as accepted preparatory schools. With the liberal appropriations for the erection of suitable buildings, and with an enlarged income, this institution is the equal of other institutions of its class in other States.

96. The State Normal School.—At the opening of the university in 1855, the normal department was the largest department of the school. This department was abolished in 1873 and a professorship in didactics established in its place. This chair was to give instruction to advanced students in the science and art of teaching. After this occurred, agitation for a separate normal school began and, in 1876, the Legislature authorized the organization of such a school at Cedar Falls. This school is strictly confined to the instruction and training of teachers for the public schools, and none but such as intend to teach are encouraged to enroll. To attain this object, its courses of study are arranged to meet the wants of all kinds of teachers in country and city schools. Its faculty is selected with the same purpose in view, and the work done is, therefore, as well adapted as possible to the needs. The government of the school is vested in a Board of Trustees of seven members, with the Superintendent of Public Instruction as president.

97. The State Library and the State Historical Department.—These two State institutions are separate and distinct, though managed by the same Board of Trustees, consisting of the Governor, the Supreme Judges, the Secretary of State and the Superintendent of Public Instruction. (1) In the beginning the library was founded for the benefit of

the supreme court, but afterwards such other books were added as were also useful to the legislature, other State officers, and advanced students. It includes one of the best law libraries in the United States. It is under the charge of a State librarian elected by the Board of Trustees. (2) The historical department was organized July 1, 1892. It is in charge of a curator selected by the Board of Trustees. He makes such collections of archæology, geology, natural history, military relics, bound volumes of newspapers, autograph letters, books published in Iowa, pamphlets, etc., as particularly bear upon the history and development of the State and nation.

The Library Commission, created in 1900, consists of the State librarian, superintendent of public instruction, president of the State University, and four members appointed by the governor. It encourages the formation of local libraries, and controls a large traveling library.

98. The State Geological Surveys.—There has been from the beginning of our history, a scientific interest in the mineral deposits of the State. Hence, January 31, 1855, the first geological survey was authorized, and James Hall, of New York, appointed State geologist. This survey was regarded as successful from a scientific standpoint, and the published reports are still esteemed. The second geological survey was authorized April 2, 1866, and Charles A. White, of Iowa City, was appointed State geologist. Two volumes of valuable information, and a large collection of minerals and fossils was the result. The third geological survey was authorized by the general assembly in 1892, and Samuel Calvin, of Iowa

City, was appointed State geologist by the Geological Board. Several valuable reports have been prepared, and more attention has been given to the commercial interests of geology than in previous surveys., such as clays, rock, sand, natural gas, coal, etc. This survey is still in progress.

99. The Boards of Control.—1. Board of Dental Examiners.—This board was authorized by the nineteenth general assembly (1882). The act provided for the appointment by the governor of five practical dentists, who have resided five years each in Iowa, to control the practice of dentistry and to examine and license persons that were competent to undertake the business.

2. Board of Health.—By an act of the twenty-first general assembly (1886), the practice of medicine was regulated, and a board of seven physicians was appointed by the governor. This board appoints its own secretary, who is the executive officer of the board, and has authority over the interests of the health and life of the citizens of the State. It has power to make such regulations, as are deemed necessary, to preserve the public health, and to establish rules in all matters of quarantine. It manages the State bacteriological laboratory at Iowa City. It makes rules for the inspection of illuminating oils. It examines and licenses physicians, osteopaths, nurses, and embalmers.

3. Commissioners of Pharmacy.—The eighteenth general assembly (1880) provided for the better regulation of pharmacy and the sale of medicines and poisons. The governor appoints a board of three competent pharmacists, selecting one each year (Code

§ 2584). Persons who desire to conduct the business of selling at retail, compounding, or dispensing drugs for medical use, must first be examined by this board and be granted a certificate authorizing them to do so. Graduates of reputable schools of pharmacy are granted certificates without the formal examinations.

4. Law Examiners.—The State board of law examiners was created by act of the twenty-eighth general assembly. It consists of the attorney-general and four or more members of the bar (lawyers) appointed by the supreme court. It examines applicants for admission to the bar.

5. State Board of Control.—See § 125.

100. Educational Board of Examiners.—The nineteenth general assembly (1882) passed an act creating a State board of examiners. This board consists of the superintendent of public instruction, as *ex-officio* member and president, the president of the State University, and the president of the State Normal School, and two additional persons, one of whom must be a woman, appointed by the governor. The Board holds annually at least two examinations, and grants State certificates for five years, and State diplomas for life, to competent experienced teachers who are examined by it. Other teachers' certificates are granted under its supervision.

101. The State Societies.—1. Agricultural.—The Agricultural Society was organized in 1854, and in October of that year held its first annual fair. The fair was at first held in different parts of the State from year to year, but in 1885 large and valuable grounds were purchased at Des Moines. In connection with the State

organization there have been established about one hundred local branch societies, which make annual exhibitions in their several counties and districts and are aided by State appropriations. By act of the twenty-eighth general assembly, the State society was reorganized as the department of agriculture. This department is managed by a board composed mostly of directors elected by a convention of delegates representing the local societies and certain other organizations. The governor, president of the State Agricultural College, State food and dairy commissioner, and State veterinarian are *ex-officiis* members of the board. The board controls the State fair, publishes the "Iowa Year Book of Agriculture," and in other ways promotes agriculture and animal industries.

2. Historical Society.—In 1857 this society was organized under an act of the sixth general assembly. It is in connection with the State University, and its object is to collect, arrange, and preserve a library of books, pamphlets, etc., illustrating the history of Iowa. This society has endeavored to carry out the objects of the law, and has a large and valuable collection at Iowa City. Considering the small financial support it has received since its founding, it has much to show for its labors.

3. The Horticultural Society.—This society has for its object the promotion and the encouragement of horticulture and arboriculture in Iowa, by the collection and dissemination of practical information regarding the culture of such fruits, flowers, and trees as are best adapted to the soil and climate of the State. In order to facilitate the work, the State is divided into

twelve districts, each having its own director and holding its own meetings, all of whose transactions are reported to the secretary of the State society. An annual report is published at the expense of the State.

4. The Iowa State Teachers' Association.—This association is a voluntary organization of educators from the various lines of work in the State. It was organized in Muscatine, May 10, 1854, and holds an annual meeting of several days' session. The object of the association is the mutual benefit of its members educationally, and the improvement of the schools of the State. Its proceedings are published and distributed to the members and interested parties by the State superintendent of public instruction.

5. The Iowa Academy of Sciences.—This society was organized in 1887. Its object is to encourage scientific work in the State. Its membership consists of (1) fellows, residents of the State who are engaged in scientific work; (2) associate members, residents of the State who are interested in such work; (3) corresponding fellows whose residence is in other States and who are engaged in scientific work. It is a prosperous and successful society, holding annual meetings and publishing an annual report of great value.

Note.—The legislatures of Iowa are called General Assemblies and are known by number, the one that existed in 1896–97 being the 26th General Assembly; the one in 1904–05, the 30th; the one in 1906, the 31st; the one in 1907–08, the 32d, etc. After the adjournment of each assembly, the new laws are published in book form, under the title, "Laws of Iowa"; the year of passage being attached to distinguish the volumes. The laws as a whole have been occasionally collected, revised, and published in one volume. These are known by the names, Code of 1851, Code of 1860, Code of 1873, and Code of 1897. References to Code, in this book, are always to Code of 1897.

CHAPTER X

GROWTH, DEVELOPMENT, AND CHANGE

102. The Rate of Progress.—Iowa's record of advancement in material and industrial development is a marvelous page in history, while her progress in education, religious ideas, and moral reform has not been surpassed by any other state in the Union. Her political, social, and moral policies have been in the front rank of great enterprises, while her stability of policy and the persistence in efforts to secure for her people all the benefits of civilization, without its most serious abuses, is a proud chapter in the history of the last half century. Fifty years of Statehood saw her standing side by side with the oldest States in the Union, equaling them in educational development, in industrial enterprises, and in opportunity, while surpassing many of them in moral reforms, religious activity, and true ideas of living.

The Semi-Centennial.—In October, 1896, occurred a week of festivity and celebration in honor of the first half century of Iowa history. This celebration was held at Burlington, the first Territorial capital, and was managed by commissioners appointed by the State and also by the city. This combined interests that made the whole week a notable event. Addresses were given by prominent men and women of both State and Nation. Those persons who had been the makers of Iowa history and institutions, and were still living, were asked to tell the story of progress, development and sacrifice. An attempt was made to pay tribute to all the forces of culture, education and politics that had a hand

in determining present Iowa, and, at the same time, to preserve to history the deeds of the heroes and great characters who had so firmly established the governmental foundations. The programs were assigned to different days, each evening being devoted to electrical displays, fire-works, parades, etc., to give effect and glory and make an impressive occasion. The whole city was beautifully decorated with bunting, arches of triumph were erected over the principal streets, and all the means of modern invention and illumination were employed to make the celebration long to be remembered. The program of days was distributed as follows: An official day, a pioneer's and old settler's day, an educational day, a woman's day, a secret society day, a republican day, a democratic day, a religious day, in all of which the different addresses and other exercises were so planned as to pay tribute to the memory of the fifty years of development and progress that had come to Iowa for her people in prosperity, happiness, freedom and civil government.

103. Growth in Population.—From the beginning of settlement, there has been an almost constant growth in population. The largest percentage of growth occurred between 1850 and 1856, when the increase was 169 per cent. Between 1840 and 1846, the rate of increase was 138 per cent. In 1840 the census gave the total population as 43,112; in 1860, 674,913; in 1880, 1,624,615; in 1895, 2,058,069; in 1900, 2,231,853; and in 1905, 2,210,050.

104. The Early Modes of Travel.—The settler came to Iowa from the States east of the Mississippi river as soon as the treaties with the Indians permitted. There were no public roads, and he did not wait for Governmental enterprise to open the way. He came in the traditional covered wagon, with his household goods and his little store of money and of live stock, and opened up a farm and built his own house. There were no Government roads, and, as there are few rivers

of any size, it was possible to cross the State in almost any direction with very little trouble. The Mississippi river was his means of reaching market with his produce, and the Government stage coach transferred the mail and the passengers at stated intervals, to the limits of civilization from the cities on the Mississippi border.

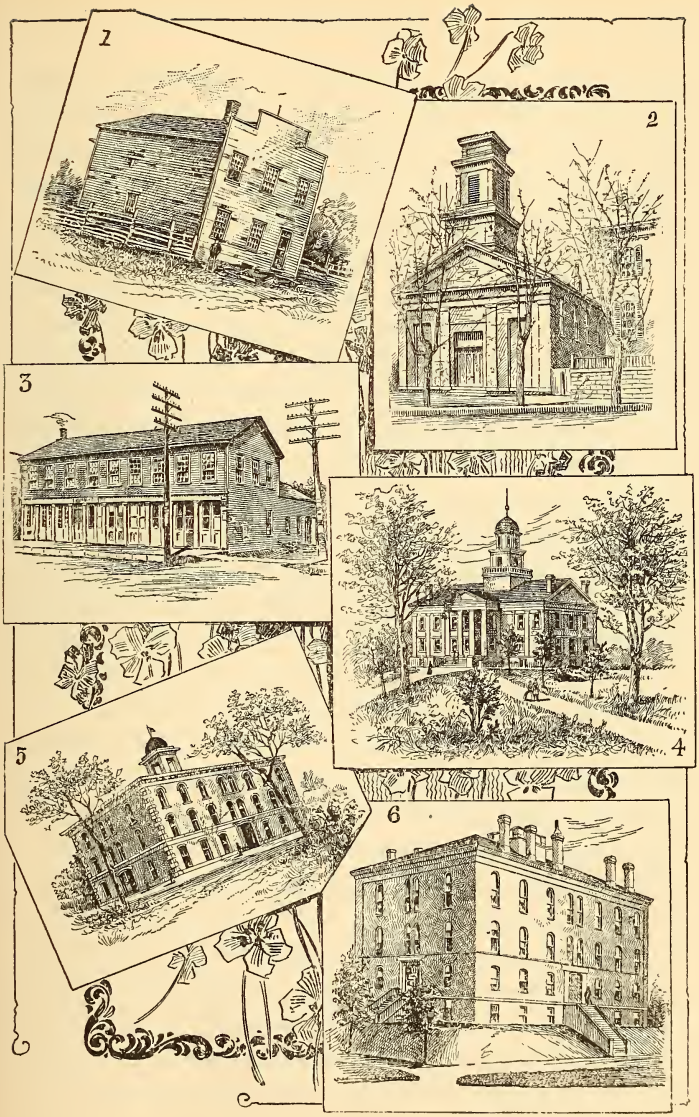
105. Urban Population.—The people of this State are chiefly devoted to farming and grazing. The kind of crops raised, as well as the kind of live stock that is most successfully produced, are adapted to the conditions imposed by nature. There are no very large cities in the State, such as most of the other great States of the Union have, the most populous cities having less than 100,000. In 1880, Iowa had nineteen cities with a population of 4,000 or more; in 1905 there were thirty-seven cities of such grade of population. The urban population has been continually on the increase, and the census of 1905 shows that 48.3 per cent of the people live in cities and towns. This development is due to the better school facilities of the towns, to increase of wealth, and to the growth of manufacturing, mining, and other industries.

106. The First Effects of the Railway.—The covered wagon of the mover, the freight wagon of the teamster, and the stage coach did not long hold the supremacy they had held in older states. Good public roads, such as are common in the older communities, did not become a necessity in Iowa, as the construction of the railways early brought every man a home market for his produce, and deferred the proper grading and paving of highways to a later time.

Few States were slower to make adequate provision by law for the development of good public highways, and it is only recently that much interest in such improvements has been aroused.

107. Railway Building.—The first railway was begun in 1854. The close of the year 1855 found sixty-seven miles in operation. At the opening of the war of 1861, there were but 331 miles constructed, but when peace came in 1865 there were 847 miles of railway in Iowa. Then came the era of speculation and railway extension that projected lines, heretofore unthought of, and caused railways not to follow but precede the settlement of the country. Parts of Iowa were so far from market and so poorly supplied with fuel and means of subsistence that it would have taken several decades, without the railroad, to do what was accomplished in a few years with its aid. The year 1875 closed with 3,765 miles in operation, the year 1885 with 7,496 miles, the year 1895 with 8,481 miles, and the year 1905 with 9,853 miles, so that every county and almost every town and hamlet has at present daily mail and regular passenger and freight communication through the steam railway.

108. State Control of Railways.—The railways became, as a matter of course, a prominent factor in the industrial development and the material progress of the State. They were constructed by United States donations of land, by contributions of the people, by taxes voted upon townships by the electors as an aid to encourage construction and development, and by money obtained by selling bonds in eastern markets. While they were mostly local and State enterprises in



TEMPORARY CAPITOLS OF IOWA.

1. BELMONT, 1836. 3. IOWA CITY, 1841. 5. DES MOINES, 1858.
2 BURLINGTON, 1837. 4. IOWA CITY, 1842. 6. DES MOINES (as remodeled), 1868.

the beginning, in the course of a few years their property passed into the control of interstate corporations and great discriminations, as to rates charged for traffic, became common. As a consequence, the State undertook the control of the business of these corporations so far as compelling equity and reasonable service at reasonable rates was concerned, and enacted laws and appointed commissioners, who, as officers of the State, were entrusted with the adjustment of these differences between the corporations and the people. Out of this has grown a State system that is among the most progressive and the most equitable that at present exists in any State. Iowa was a pioneer in the method of control of railways, in force within her borders, and time will prove the benefit of this system to both railways and the people they serve, as when the legal principle of State control has been established, the settling amicably the many problems of modern transportation can be satisfactorily accomplished.

109. Iowa's Capitals.—1. Belmont, Iowa county, Wisconsin, in 1836, was the first capital of any organized government in which representatives elected by the people, in the country west of the Mississippi river, sat as legislators. The site of this town is now in La Fayette county, Wisconsin, as the old town was long since abandoned. Here Governor Henry Dodge administered the oath of office to those who considered the problems of Iowa people, and here it was decided to move the capital of Wisconsin Territory to Burlington (Iowa), and to locate the permanent capital at Madison (Wisconsin).

2. Burlington became the capital by being able to

show that it could count more inhabitants, even if it did not have them, than its rival, Dubuque. The legislatures of 1836 and 1837 of Wisconsin Territory met at Burlington, and when Iowa became an organized Territory in 1838, it remained the capital until 1841, when the seat of government was moved to Iowa City.

3. Dissatisfaction with this location caused the first Territorial legislative assembly to order that a new capital, to be called Iowa City, should be selected in the wilderness, and a permanent building erected. This led to the construction of a stone capitol, now the central building on the State University grounds. In this capitol ten regular legislative sessions were held and three constitutional conventions. Much of the history of the State, during the formative period, is centered about this building in Iowa City—the first capitol of the State.

4. In 1857 Iowa City had also become remote from the center of population, and hence the capital was removed to Des Moines—the final home of organized State government. Here was erected first a temporary capitol, and afterwards the permanent capitol at a cost of more than $3,000,000. It is worthy of note that in the long time devoted to the construction of this magnificent building, there was not a single transaction that was not honest and worthy of being approved by the people. Hence the State has a remarkably fine capitol, considering the amount of money expended, and it is also a monument to the integrity and fair dealing of the architects and builders.

110. The Policy of the State as to Debt.—Early

in the State's legislation, a small loan of money was made to maintain the government and float the debt that had accrued. During the war of 1861, the State increased its indebtedness by making a loan for a war and defense fund. Excepting these two loans, the policy of the State has been not to appropriate any money that it does not have for any purpose. Hence, the most of the years of Statehood is a record of living within one's means, and no State debt has been accumulated. Therefore, when financial crises occur in the United States, the people of Iowa do not suffer from financial reverses in the world of commerce and of industry as much as States whose policy is different.

111. The Policy of the State as to Public Institutions.—In the beginning Iowa adopted the policy of distributing its public institutions in different locations throughout the State. When new institutions are founded, they are located in places where no State institution at present exists. This policy has had the effect of bringing all the people more or less into sympathy with one or more separate institutions, and, taking into consideration the policy of "paying as we go," that governs appropriations, Iowa has notable and great institutions, all of which are highly valued and well supported by the people, who are developing them as rapidly as circumstances and the financial policy will permit. These things are a fair index of the progressive spirit of the people, and give much encouragement to hope for future greatness and more effective development.

112. Political Changes.—From 1838 to 1854, was the era of Democratic party government in Iowa.

Since 1854, the principles and the ideas of the Republican party have controlled the affairs of the State. The history of these two periods is extremely interesting to the student, as it is, thereby, directly associated with development and change in civil government, and shows very plainly the effect of political ideas, and the consequence of political theories, on the management of public policies. Iowa is what she is to-day because of the constitutional and the legislative construction that the dominant principles of both of these historical periods produced. The study of Iowa civil government will establish this fact and lead to valuable and useful conclusions.

113. Productions.—The soil of Iowa is all productive. There is scarcely any waste or swamp land within its borders. There is scarcely an acre that could not be used to help support human life by giving food, as a return for reasonable effort. Agricultural pursuits, therefore, occupy the majority of the people, though urban population and manufacturing are gradually increasing. There are no people in the world that, as a whole, are better fed and clothed and should therefore be happier than the people of Iowa. The chief staple is corn, Iowa being the first State in the Union in the quantity of its production. The United States Department of Agriculture reports that Iowa in 1906 had 9,450,000 acres of corn and that the crop amounted to 373,275,000 bushels—one eighth of the amount produced in the whole country. The second staple is oats, in which Iowa is also the first State in the Union, the acreage of 1906 being 4,165,000 and the product 140,777,000 bushels.

Wheat was formerly produced quite generally, but has gradually declined, as it has not been profitable compared with stock raising and the raising of corn and oats. The year 1906 gave wheat an acreage of 585,660 and a production of 9,212,218 bushels, Iowa being the twenty-second State in the Union in the production of this cereal.

114. Mining.—Thirty of the counties of Iowa are in the bituminous coal region, and mining is, therefore, a large industry, some 17,000 men being employed in this occupation. About 350 coal mines are in operation, with a yearly output of about 7,000,000 tons, valued at more than $10,000,000. In addition to coal, building stone is found in abundance in nearly every part of the State. There are about 275 quarries in operation, and the yearly output exceeds $600,000 in value. The mineral products of Iowa include also a large amount of gypsum and a little lead and zinc. But the total value of all mineral products of the State is small in comparison with the value of her crops and live stock.

115. Live Stock and Dairy Products.—This State is successful in the production of cattle, horses, hogs, sheep, and poultry. The total value of the cattle at the beginning of the year 1907 was $140,057,600; of horses, $139,178,490; of hogs, $81,552,750; of sheep, $3,747,574. The State developed its dairy industries with great rapidity. In 1875 the entire output was 37,862,540 pounds of butter and 1,154,803 pounds of cheese, while at the close of twenty years, the census (1895) gave the figures 93,520,914 pounds of butter and 4,628,240 pounds of cheese as the year's product. Ten years later

the census reported a year's product of 71,181,766 pounds of butter and 2,829,745 pounds of cheese. There were 655 creameries in 1905, with a capital of $2,919,092, while 1,160 persons had permanent employment in this industry, the value of butter manufactured for the year being $14,330,754. At the same time there were 48 cheese factories with an output of product valued at $282,078.

116. Public Education.—It can be truly said that the legal foundations of common schools in Iowa were laid by the Ordinance of 1787, which declared that "schools and the means of education shall forever be encouraged." This Governmental pledge belonged to the Territory of Wisconsin, as one of the divisions of the Northwest Territory. Iowa was for a time a part of Wisconsin, and the Organic Act that created Iowa Territory, separating it from Wisconsin, declared that "its inhabitants shall be entitled to all the rights, privileges, and immunities, heretofore granted and secured to the Territory of Wisconsin." These fundamental beginnings on the part of the United States Congress were followed very auspiciously by the message of Governor Lucas in 1838, in which he recommended, "the establishing at the commencement of our political existence of a well digested system of public schools."

117. The First School Provisions.—With these preliminary conditions, and with a people already anxious for education, it was but to be expected that the First Legislature would provide a law authorizing the organization of public schools. This law went into effect January 1, 1839, and provided that the

schools should be opened to free white citizens between the ages of four and twenty-one. It was not very complete, as these legislators were not much experienced in law making, and they did not have a single statute of other States at hand to copy and revise; but it was a good beginning, and showed that the spirit within them was in harmony with the famous Ordinance of 1787, and the Organic Act that created Iowa Territory in 1838. The governor had recommended a township system, but the law provided for a district system, the legislature considering that plan of organization more practical at that time. It still is maintained in the majority of Iowa communities, although State superintendents of public instruction and prominent educators have universally recommended a change to the township system.

118. The Constitutional Provisions.—The Constitutions of 1844 and 1846 both had an article concerning education and school lands, provided for "the appointment of a Superintendent of Public Instruction," and also that "the Legislature shall encourage, by all suitable means, the promotion of intellectual, scientific, moral and agricultural improvement." It also provided, that "the proceeds of all lands that have been or hereafter may be granted by the United States to this State for the support of schools, and the five hundred thousand acres of land granted by Congress to the new states, and also section sixteen in every congressional township, shall be inviolably appropriated to the support of schools throughout the State." Again it provided that "the Legislature shall provide for a system of common

schools by which a school shall be kept up and supported in each school district at least three months in every year." Again it states that "the Legislature shall provide for the establishment of libraries as soon as the circumstances of the State will permit."

119. Early Method of Support of Schools.—In the beginning, schools were supported by rate bills paid by the patrons, the school-houses being erected by public taxation. With the development of the State and the demand for better schools, the system of support naturally became a part of legislation. January 15, 1846, it was provided by law that the schools could be supported by the assessment of a school tax, but even then the amount able to be raised was not sufficient, and it was supplemented by a rate-bill system. Governor Grimes, in 1854, in his first message, advocated such amendment to the laws as would make the public schools absolutely free to the patrons, allowing the taxable property to pay the necessary expenses.

120. The Public School Strengthened.—The legislature of 1854 therefore revised and improved the school laws, giving the people and the school board increased authority and a larger support fund to pay teachers and contingent expenses. Many of the school districts, particularly of the cities, at once took advantage of the new law, and rapid progress occurred at once in public elementary education. The city superintendent and the high school also now appeared, the honor for the first of each of these belonging to Dubuque, who established the office and the school in 1856. The city training school for teach-

ers appeared in Davenport the following year, together with the employment of its first city superintendent.

121. The State Board of Education.—With the constitution of 1857, there came a modification of the State system. The State board of education assumed control, and the office of State superintendent of public instruction was abolished. This board was a useless and powerless body, because, while granted legislative power, yet the legislative assembly was able to repeal any legislation performed by the board of education, and hence this conflict in authority prevented any results of any importance. As the constitution permitted a change without admendment, the general assembly abolished this board March 23, 1864. During the existence of this board, the Secretary of the Board of Education had been substituted for the office of superintendent of public instruction, but the law of March 23, 1864, again restored the original office of superintendent of public instruction.

122. Horace Mann and Iowa.—The codifying of the school laws became a prominent question as early as July 2, 1856, when the condition of affairs caused Governor Grimes to recommend that three competent persons be selected to revise all the laws on the subject of schools and school lands, and make report to the assembly. This suggestion became a law July 14, 1856, and the governor appointed Horace Mann of Ohio (late secretary of the State board of education of Massachusetts, and one of the most prominent educators in the Union), Amos Dean of New York (acting

chancellor of the State University of Iowa) and F. E. Bissell (an attorney of Dubuque), the commissioners. The work desired was promptly done, and a report made to the assembly through the governor; but no action was ever taken on it as a whole, though some use was doubtless made of the same, in constructing the law of March 12, 1868, since a number of the recommended features were adopted. This law provided for a county superintendent of schools, for a county teachers' institute at the expense of the State, recognized the State University as the head of the public educational system, and provided for the opening of a normal department in connection with the University that would grant free instruction to teachers.

In 1874, the institute system was modified by continuing the State appropriation of $50 for each county each year, increasing the power of the county superintendent in regard to the management of institutes, providing for the holding of normal institutes annually, when the schools were not in session, and providing a fee of one dollar for each examination for a teacher's certificate, and also the fee of one dollar for enrollment as a member of an institute; thus creating a fund for the support of these valuable summer schools for teachers. Great benefit has been derived from these means, of preparing of a corps of teachers for the public schools of the State.

123. Education not Supported by Public Taxation.—Outside of the public schools and higher State educational institutions, there are colleges, seminaries and parochial schools supported by churches and other benevolent organizations. There are more than 250 such schools, employing over 2,000 instructors, of whom half are of strictly collegiate grade. They enroll over 40,000 students, and each year graduate more than 3500.

124. Other Educational Influences.—Under the laws of the State, free public libraries can be established in cities and towns. Many such libraries are in existence, reporting about 600,000 volumes. The State library has over 90,000 volumes and is one of the best law libraries in the Union. There are published in the State more than 1,000 periodicals and newspapers, with a circulation of about 2,750,000 copies. The teachers' institutes and conventions and also the farmers' institutes are useful as educational agencies. Such organizations are authorized in every county, and can hold at least an annual session, and are encouraged and financially aided by the State.

125. State Board of Control.—From time to time the State has provided institutions for the insane, the reform and correction of offenders, the education of the people, and the care or training of the unfortunate and deficient classes. (Chapter IX.) As these institutions were founded, the several legislatures provided some system of management by the creation of a separate board for each one, whose duties and membership were regulated by the character and the mission of the institution established. This system of organization was a source of much trouble to the several State officers in making their biennial reports to the governor, and also was unsatisfactory to the general assembly because of the difficulty to know the comparative needs of these institutions in providing for their support and maintenance. Hence, in 1898, the twenty-seventh general assembly abolished the several separate systems of independent management and organized a new system under one single management, the Board of Control of

State Institutions, often called the "State Board of Control." This board was granted complete authority regarding the management of all the State institutions excepting the university, the agricultural college, and the normal school, over which institutions it has supervisory control. It was thought best to leave the internal management of the educational institutions to their respective boards as they formerly existed, but to include them under the Board of Control so far as the financial management of their affairs is concerned. This Board of Control, consisting of three members appointed by the governor with the approval of two-thirds of the Senate in executive session, assumed authority July 1, 1898.

PART II

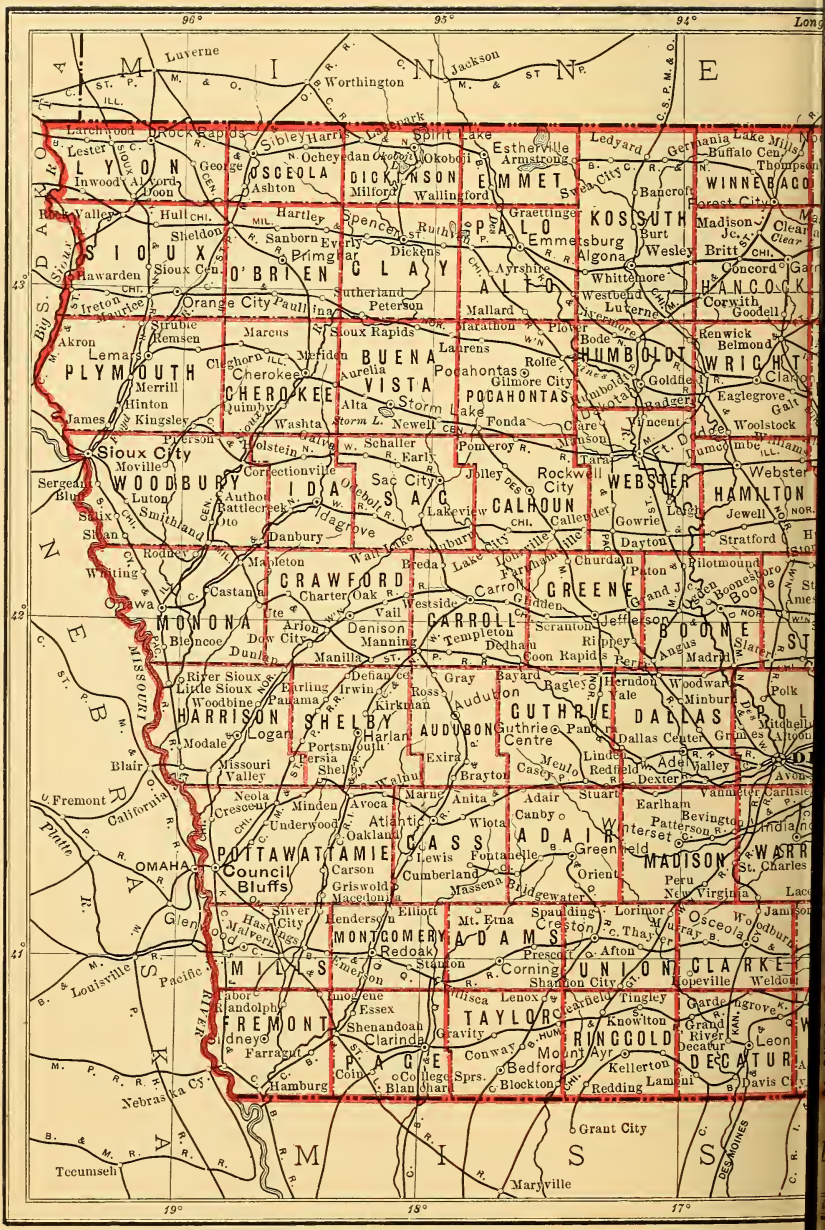
CIVIL GOVERNMENT OF IOWA

CHAPTER XI

LOCAL GOVERNMENT

126. **The Formation of the American Union.**—The United States is one nation made by the voluntary union of many States. Its motto, *E pluribus Unum*, one from many, describes its peculiarity in this particular. At the close of the Revolution, the thirteen American Colonies, having secured their independence of English control, might have become thirteen separate States, each independent of the others, like the several States of continental Europe; but, realizing that there is strength and safety in union, they agreed to unite under a central government. In forming this union, they did not give up all their rights as States, but simply agreed upon the rights which they would resign and the authority which they would grant to the Central Government.

127. **The Constitution.**—This agreement is recorded in the Constitution of the United States, and can be changed only by the formal consent of three-fourths of the States composing the Union. (Constitution of the United States, Art. V.) The powers which belong to the Central or Federal Government



96°
95°
94°
Long
43°
42°
41°
19°
18°
17°
M I N N E
S. DAKOTA
NEBRASKA
MISSOURI RIVER
Big Sioux
Platte R.
Luverne
Worthington
Jackson
Larchwood
Rock Rapids
Lester
Inwood
Alvord
Doon
George
Sibley
Harris
Ocheyedan
Okoboji
Spirit Lake
Estherville
Armstrong
Ledyard
Germania
Lake Mills
Buffalo Cen.
Thompson
Rock Valley
Hull
Sheldon
Hartley
Sanborn
Everly
Primghar
Dickens
Graettinger
Emmetsburg
Algona
Swea City
Bancroft
Forest City
Madison Jc.
Clear
Britt
Concord
Hawarden
Sioux Cen.
Ireton
Maurice
Orange City
Paullina
Sutherland
Peterson
Ayrshire
Whittemore
Westbend
Luverne
Livermore
Corwith
Goodell
Akron
Struble
Remsen
Lemars
Marcus
Sioux Rapids
Marathon
Plover
Bode
Renwick
Belmond
Merrill
Hinton
James
Kingsley
Cleghorn
Cherokee
Meriden
Aurelia
Laurens
Rolfe
Pocahontas
Gilmore City
Goldfield
Clarion
Eaglegrove
Galt
Quimby
Washta
Alta
Storm Lake
Newell
Fonda
Clare
Vincent
Woolstock
Sioux City
Moville
Pierson
Holstein
Schaller
Early
Pomeroy
Manson
Tara
Ft. Dodge
Dumcombe
Williams
Webster
Sergeant Bluff
Luton
Correctionville
Sac City
Jolley
Rockwell City
Salix
Smithland
Oto
Battlecreek
Odebolt
Lakeview
Callender
Gowrie
Leigh
Jewell
Sloan
Danbury
Idagrove
Wall Lake
Auburn
Lake City
Lohrville
Farnhamville
Dayton
Stratford
Rodney
Whiting
Mapleton
Breda
Churdan
Paton
Pilotmound
Castana
Charter Oak
Westside
Carroll
Glidden
Grand Jc.
Ogden
Boonesboro
Boone
Onawa
Ute
Vail
Denison
Manning
Templeton
Scranton
Jefferson
Blencoe
Arion
Dow City
Dedham
Coon Rapids
Rippey
Angus
Madrid
Slater
Dunlap
Manilla
River Sioux
Little Sioux
Woodbine
Earling
Panama
Defiance
Irwin
Kirkman
Gray
Ross
Bayard
Bagley
Herndon
Vale
Woodward
Minburn
Polk
Modale
Logan
Harlan
Portsmouth
Persia
Shelby
Exira
Brayton
Guthrie Centre
Panora
Dallas Center
Grimes
Mitchell
Blair
Missouri Valley
Walnut
Casey
Menlo
Linden
Redfield
Adel
Valley
Dexter
Avon
Fremont
California
Neola
Crescent
Minden
Underwood
Avoca
Marne
Anita
Adair
Stuart
Earlham
Vanmeter
Carlisle
Oakland
Atlantic
Wiota
Canby
Winterset
Patterson
Bevington
Indianola
Lewis
Fontanelle
Greenfield
Orient
Carson
Griswold
Macedonia
Cumberland
Massena
Bridgewater
Peru
New Virginia
St. Charles
Lacon
OMAHA
Council Bluffs
Glenwood
Silver City
Hastings
Malvern
Henderson
Elliott
Mt. Etna
Spaulding
Creston
Lorimor
Murray
Osceola
Woodburn
Jamison
Redoak
Prescott
Afton
Stanton
Corning
Shannon City
Hopeville
Weldon
Louisville
Pacific
Tabor
Randolph
Imogene
Essex
Shenandoah
Clarinda
Gravity
Lenox
Tingley
Clearfield
Knowlton
Grand River
Garden Grove
Decatur
Leon
Sidney
Farragut
Coin
College Sprs.
Blanchard
Conway
Bedford
Mount Ayr
Kellerton
Redding
Lamoni
Davis City
Hamburg
Nebraska Cy.
Tecumseh
Grant City
Maryville
DES MOINES
LYON
OSCEOLA
DICKINSON
EMMET
KOSSUTH
WINNEBAGO
SIOUX
O'BRIEN
CLAY
PALO ALTO
HANCOCK
PLYMOUTH
CHEROKEE
BUENA VISTA
POCAHONTAS
HUMBOLDT
WRIGHT
WOODBURY
IDA
SAC
CALHOUN
WEBSTER
HAMILTON
MONONA
CRAWFORD
CARROLL
GREENE
BOONE
HARRISON
SHELBY
AUDUBON
GUTHRIE
DALLAS
POLK
POTTAWATTAMIE
CASS
ADAIR
MADISON
WARREN
MILLS
MONTGOMERY
ADAMS
UNION
CLARKE
FREMONT
PAGE
TAYLOR
RINGGOLD
DECATUR

IOWA
Scale of Miles
0 5 10 20 30 40 50
93° from Greenwich
92°
91°
MITCHELL
HOWARD
WINNESHIEK
ALLAMAKEE
CHICKASAW
FLOYD
BREMER
FAYETTE
CLAYTON
BUTLER
GRUNDY
BLACKHAWK
BUCHANAN
DELAWARE
DUBUQUE
JACKSON
TAMA
BENTON
LINN
JONES
CLINTON
MARSHALL
POWESHIEK
IOWA
CEDAR
SCOTT
JASPER
JOHNSON
MUSCATINE
MAHASKA
WASHINGTON
KEOKUK
LOUISA
MARION
WARREN
JEFFERSON
HENRY
DES MOINES
MONROE
DAVIS
VAN BUREN
LEE
APPANOOSE
Cedar Rapids
Iowa City
Davenport
Burlington
Keokuk
Fort Madison
Dubuque
Clinton
Muscatine
Oskaloosa
Ottumwa
Fairfield
Mount Pleasant
Centerville
Bloomfield
Chariton
Knoxville
Pella
Newton
Grinnell
Marshalltown
Waterloo
Cedar Falls
Charles City
Decorah
Postville
McGregor
Elgin
Clermont
Strawberry Pt.
Cascade
Dyersville
Maquoketa
Andrew
Bellevue
Lamotte
Preston
Sabula
Princeton
Camanche
Clarence
Wheatland
De Witt
Lyons
Durant
Wilton Jc.
Wilton
Davenport
Rock Island
Moline
Galesburg
Monmouth
Bushnell
Carthage
Alexandria
Montrose
Argyle
Bonaparte
Milton
Pulaski
Moulton
Cincinnati
Centreville
Drakesville
Moravia
Albia
Melrose
Eddyville
Oskaloosa
Sigourney
Washington
Columbus Jc.
Columbus City
Wapello
Mediapolis
Middletown
Danville
New London
Salem
Winfield
Brighton
Richland
Hedrick
Fremont
Sharon
Whitebreast
Deep River
Monroe
Malcolm
Grinnell
Newton
Colfax
Prairie City
Monroe
Baxter
Monticello
Coggon
Central City
Anamosa
Olin
Lisbon
Mechanicsville
Stanwood
Tipton
Lowden
Wheatland
Clarence
Delmar
Charlotte
Sabula
Lamotte
Bellevue
Maquoketa
Andrew
Monticello
Cascade
Dyersville
Colesburg
Strawberry Pt.
Elgin
Clermont
McGregor
Postville
Decorah
Lansing
Kains
New Albin
Hesper
Lime Spring
Preston
Austin
Hustad
St. Ansgar
Osage
Mitchell
Plymouth
Nora Springs
Floyd
Rockford
Marble Rock
Nashua
Charles City
Chickasaw
Fredericksburg
Waucoma
Postville

are, then, only such powers as are granted to it in the Constitution. The Constitution is the fundamental law of the land, on which all other laws must be based. The Federal Government may make such laws and treaties as are consistent with the Constitution, and the Constitution, laws, and treaties of the United States are the *supreme* law of the land. (Constitution of the United States, Art. VI., 2.) We have then the following outline:

The Supreme Law of the land, comprising:

1. The Constitution or fundamental law.
2. The United States laws or statutes.
3. Treaties.

128. The Reserved Rights of the States.—The powers not resigned by the several States, or granted to the General Government, are retained by the States. (Constitution of the United States, Amendment X.) The State may, then, exercise any power not inconsistent with the supreme law of the land. Anything which is inconsistent with the Constitution is said to be *unconstitutional*, and any act or law pronounced unconstitutional by the United States Supreme Court is null and void. The Supreme Court cannot decide upon the constitutionality of a law unless some one suffering under that law appeals to that court against the enforcement of the law. The late decision on the income tax law, by which it was declared unconstitutional, is an example illustrating this fact. (Read *Current History*, Vol. IV., p. 537, and Vol. V. pp. 271–284.) There are now (1908) forty-six States in the Union. Our own State, Iowa, is one of these, having been admitted into the Union in the year 1845,

(31-40).* Every state has its own constitution, adopted by the people of the State and approved by Congress. (Constitution of United States Art. IV., 3, 1.) These constitutions must, of course, be consistent with the Constitution of the United States, and must insure a republican form of government. (Constitution of the United States, Art. IV., 4, 1.)

129. The State Divided into Counties and Townships.—Every State is divided into counties for governmental purposes. In Louisiana these divisions are called "parishes." Iowa has ninety-nine counties, and each county is divided into civil townships for the purposes of local government. Besides the civil townships, there are congressional townships and school townships. We have then:

1. Congressional townships, for the purpose of locating land.

2. School townships, for school purposes.

3. Civil townships, for local government purposes.

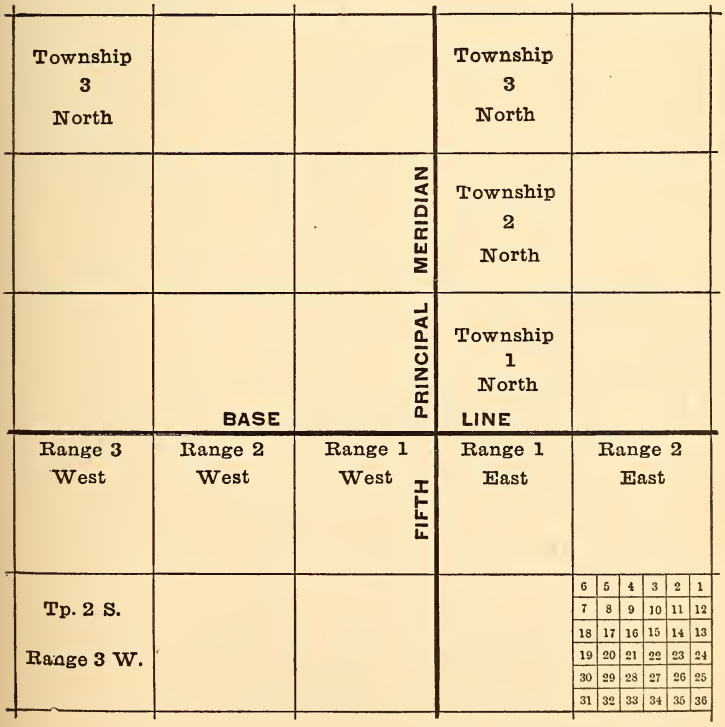
130. The Congressional Township.— This has its origin in the land ordinance of 1785 (297), and is the result of a system of surveys ordered by the Federal Government in all the new territory belonging to the United States at the close of the Revolution. These Congressional surveys are not found in the thirteen original States, as they had their land all surveyed and recorded at the county offices by the old-fashioned system. This is also true of Tennessee and Kentucky. Texas came into the Union with a system of surveys

* Figures refer uniformly to paragraphs in this work, unless otherwise stated.

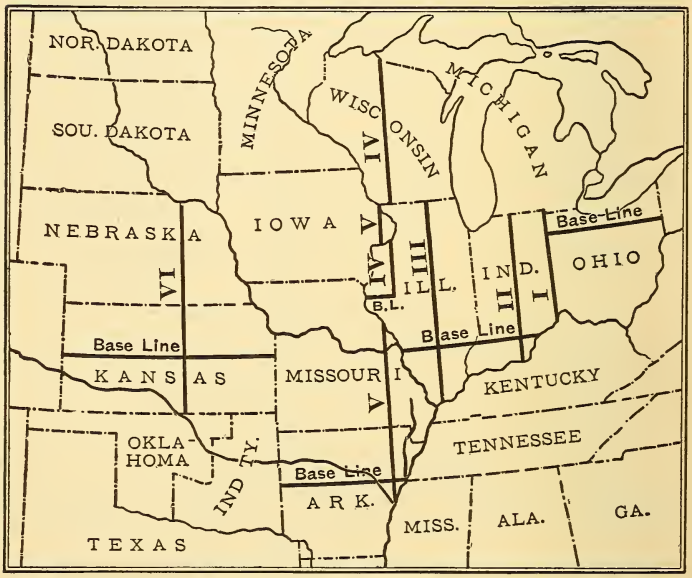
of its own, and parts of New Mexico and California, when annexed to the United States, had the old Mexican basis of land ownership. The other new States have Congressional surveys and townships.

131. The Plan of the Survey.—A line is located, running due north and south, called a principal meridian, and a line at right angles to this, called a base line. Lines are surveyed parallel to the base line, six miles apart, and other lines, six miles apart,

DIAGRAM TO ILLUSTRATE THE LOCATION OF LAND BY CONGRESSIONAL TOWNSHIPS.



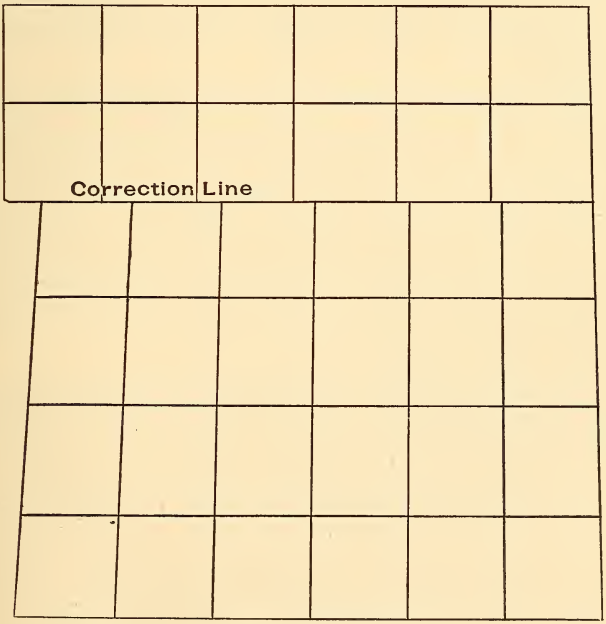
parallel to the principal meridian. (See diagram.) This divides the land into squares six miles on a side, which are called townships. The whole row of townships just east of the principal meridian is called range one east, and other ranges are numbered as shown in the diagram. In each range the township just north of the base line is called township one north, the one just south of the base line is called township one south, and so on. A little study of the diagram will enable one to locate



Location of six of the Principal Meridians and their Base Lines for Congressional Township Surveys.

any township in the system. There are twenty-four principal meridians, six of which are known by number; the rest have received special names, such as Salt

Lake meridian. The first principal meridian was established on the border line of Ohio and Indiana, the second in Indiana, the third and fourth in Illinois. The fifth, beginning at the junction of the Mississippi and Arkansas rivers, runs north through Arkansas, Missouri, and Iowa, and serves as a basis for the surveys in those States and Minnesota. The base line for this meridian passes through the junction of the St. Francis and Mississippi rivers in Arkansas. The sixth principal meridian is in Kansas and Nebraska.



Correction Lines: All lines surveyed north and south will, of course, if extended far enough, meet at the north pole. These north and south lines therefore

converge, making the townships a little narrower as they are further and further north. To avoid this shrinkage in width, the surveyors make what are called correction lines, occasionally starting the surveys anew, and making the south line of the new township full six miles in length. There are four such correction lines in Iowa: one on the southern boundary, one through Des Moines, one running through Independence, in Buchanan county, and one along the northern boundary of the State. The preceding figure illustrates the necessity for these correction lines. (Of course the convergence is exaggerated in the figure).

132. The Division of the Township into Sections.—The township is divided into thirty-six squares, one mile on a side, called sections, and numbered as in the figure below. Each section is divided into halves, quarters, and smaller divisions, for the location of farms. This plan is illustrated and explained in the figure (p. 143), and should be made thoroughly familiar to the pupil.

133. The School Township.—The school township, often called the school district, must coincide in area with the civil township, except as independent districts encroach upon its boundaries. * (134.)

1. The school township is divided into sub-districts, and the board of school directors of the district consists of one member from each sub-district with one director at large if necessary to make the whole number odd. Code § 2752 and Laws of 1898. These directors are elected for a term of one year.

* Exceptions also occur in case of intervening obstacles, such as streams. Code § 2743 note and § 2791.

TOWNSHIP 89 N., RANGE 14 W., DIVIDED INTO SECTIONS AND QUARTER SECTIONS.

6	5	4	3	2	Sec. 1
7	8	9	10	11	12
18	17	School 16 Land	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

The darkened part of section 24 would be described as the N. W. ¼ of Sec. 24, Tp. 89 N., R. 14 W., of the 5th Principal Meridian.

The darkened part of section 25 would be described as the N. E. ¼ of the N. E. ¼ of Sec. 25, Tp. 89, N., R. 14 W., of the 5th Principal Meridian.

The darkened part of section 28 would be described as the N. ½ of the S. W. ¼ of Sec. 28, Tp. 89 N., R. 14 W., of the 5th Principal Meridian.

NOTE.—A large map is published by the Federal Government, showing all the Congressional surveys in the United States. By means of this map, students may locate any city or village in his own or any other State where Congressional surveys exist. Smaller maps of Iowa can be purchased giving the surveys for Iowa, and a student should practice locating the towns of Iowa. We would suggest the location of the following cities: Atlantic, Boone, Burlington, Cedar Falls, Clinton, Cedar Rapids, Council Bluffs, Charles City, Creston, Des Moines, Dubuque, Fort Dodge, Grinnell, Indianola, Iowa City, Keokuk, Le Mars, Marshalltown, Oskaloosa, Ottumwa, Sioux City, Waterloo. Webster City, and Winterset.

2. The officers of the board of directors are a president, elected by the board from its own members at the annual organization meeting, and a secretary and a treasurer who are elected by the board from outside its membership.* The president acts as chairman of the board, signs all contracts with teachers, draws all drafts for county money, and signs all orders on the treasurer. The secretary keeps a record of the proceedings of the board, makes a report to the county superintendent, countersigns all orders on the treasurer, and keeps an account of the expenses of the school township, reporting the same to the board.

3. School Funds.—The school moneys are kept in four separate funds, the teachers', school house, school building bond, and contingent funds. The treasurer keeps a separate account with each fund, and the secretary draws from each, as the case may demand, having a check-book for each fund.

4. Independent Districts.—Besides the school township, there are various kinds of independent districts. Independent districts in cities of the first class and in cities under special charters have a board of directors consisting of seven members. Independent districts in cities of the second class, towns and villages have boards of five members, and rural independent districts have boards of three members as a rule, but five in districts which were formerly allowed six. (Code § 2754 as revised by the Laws of 1898.)

* In districts composed in whole or in part of towns or cities, the treasurer is elected by the people for a term of two years. (Code § 2754 as revised by the Laws of 1898.)

CHAPTER XII

TOWNSHIP GOVERNMENT

134. The Civil Township.—The State government, with certain restrictions laid upon it by the State constitution, and, of course, by the United States supreme law, has complete control of the county and township; but the State legislature has by law allowed the local governments much discretion in the managing of local affairs, only prescribing the general plan of government in each. Every county is divided into civil townships for purposes of government. The number and boundaries of these townships are determined by the supervisors, and may be changed by the supervisors when occasion demands it. See map of townships in Black Hawk county (158). "If the congressional township lines are not adopted and followed, the board shall not change the lines of any civil township so as to divide any school township or district, unless a majority of the voters of said school township or district shall petition therefor." *Code* § 551.* If there be within the limits of any township an incorporated city or town of over fifteen hundred inhabitants, such city or town may, on the petition of a majority of the voters in the rural part of the township, be set apart by the board of supervisors as a separate township. Code § 554.

135. Officers of the Civil Township.—As a rule,

* References to the *Code* are uniformly to *Code of Iowa, 1897.*

any legal voter is eligible to any local or county office. The eligibility of women to certain offices, notably the county superintendency of schools, has been formally recognized. The requirements in candidates for the various State officers will be mentioned in the proper place.

The officers of the civil township are given in the following table:

TOWNSHIP OFFICERS.

NAMES OF OFFICERS.	NO.	TERM.	HOW PAID.	HOW CHOSEN.
Trustees	3	2 yrs.	Per diem & fees.	By the people.
Clerk	1	2 yrs.	Per diem, percentage, fees.	By the people.
Assessor	1	2 yrs.	Per diem	By the people.
Superintendents of Roads	*		Per diem	By the trustees.
Constables	2	2 yrs.	Fees to a limited amount.	By the people.
Justice of the Peace	2	2 yrs.	Fees to a limited amount.	By the people.

* Not more than four.

When a city or incorporated town is situated in a township, the township may order the election of one or two additional justices and constables, and at least one justice and one constable must reside in the town. The rural part of the township and the municipality must have separate assessors, each choosing its own officer. If a person refuses to serve when he has been elected to a township office, he must forfeit the sum of five dollars to the use of the school fund, but he cannot be required to serve as a township officer two terms in succession. *Code*, § 575.

136. Bonds.— Most officers of the State and local

government have to give a bond for the faithful performance of their duties; that is, they have to find some one who will sign an agreement to pay to the State a certain sum of money, if it is needed to make good to the State, county, or township any loss caused by the unfaithfulness of said officer. Of late years there have been formed great fidelity companies (*Code*, § 360), like fire insurance companies, which will give such a bond for any man of good standing, if he will pay them a certain sum, small in a single case, but affording a large revenue in the aggregate. This plan has proved a very good one for all parties, and such a bond is coming to be preferred to a private bond inasmuch as it is a purely business affair, and the company is personally interested to capture the criminal in case a fraud is perpetrated by an officer for whom the company has given its bond. The governor, lieutenant governor, members of the General Assembly, judges of courts, county supervisors, township trustees, and aldermen and councilmen of towns and cities are not required to give bond. All other civil officers, except as especially otherwise provided, must give bond. *Code* §§ 1182-1183.

137. Remuneration.— The civil officers of Iowa are paid in various ways: first, by yearly salaries; second, per diem (so much a day for actual work); third, by fees, or specific sums for specified services; and, fourth, by a percentage on collections. It is hardly worth the effort required to memorize the exact amounts paid in each case, but it may be well to keep in mind the way in which each officer is paid, whether by fees or salaries.

138. Township Elections.—Most of our civil officers are chosen at the general election, which occurs on the Tuesday following the first Monday in November—in even-numbered years only, since 1904. The officers of our cities and towns are selected at the municipal elections on the last Monday in March. The school elections of the township are held on the first Monday in March; those of the independent districts are held on the second Monday in March.

139. Duties of Township Trustees.—The township trustees have two regular meetings each year, and as many other meetings as may be necessary. One regular meeting is on the first Monday in April, or as soon thereafter as the assessment book is received by the township clerk; and the other is on the first Monday in November.

Among the important matters in local government with which the township trustees have to do, we call attention to the following:

(1.) Taxes,
(2.) Public highways,
(3.) Elections,
(4.) Health,
(5.) Poor,
(6.) Fences,
(7.) Public money,
(8.) Public buildings,
(9.) Public grounds.

1. The township trustees levy the road taxes. Their levy is based on the estimated need of road scrapers and graders, lumber, and other material, and the amount of labor needed to keep the roads in good condition. This levy is made at the April meeting of the board. At this meeting also the trustees sit as a board of review for the equalization of taxes between individuals, as stated below (144).

2. The road tax is collected by the county treasurer, and turned over by him to the township clerk. The law also requires each able-bodied male resident of the town between the ages of twenty-one and forty-five, to give two days' labor upon the roads each year. The township trustees direct the expenditure both of the labor thus owing to the town, and of the money raised by the road tax. They may have the work on the roads done by contract, or they may appoint one or several superintendents of roads to oversee the work, under their direction; or they may have part of the work done by one method and part by the other. But they must cause both the property and the poll road tax to be fairly expended for road purposes in the entire township.

This plan of working the roads is called the one-road-district plan. It was first made legal, at the option of the trustees, by the twentieth general assembly, and in 1903, by act of the twenty-ninth general assembly, it was made compulsory in all townships. Before that time, the trustees had divided the township into a number of road districts, and each district had its own road supervisor, who had charge of the roads and was nearly independent of the township trustees. The new plan is a step in the direction of securing better roads throughout the State. (See Diagram, page 154.)

3. The trustees determine the place of holding elections, act as judges of elections (215), and canvass the results, reporting the same through the clerk to the county auditor for the inspection of the supervisors, who are the canvassing board for the county. The boards of supervisors of the various counties report to

the executive council at Des Moines, who make an abstract of the returns from the counties and give the official report of the results of the elections.

The accompanying table on the next page gives a consolidation of the votes of Black Hawk county in the general election of 1893.

4. As a board of health for the township, the trustees pass regulations touching nuisances and all sources of disease, including rules for quarantining persons afflicted with contagious diseases.

5. They act as a board of overseers for the poor, making suitable provision for the unfortunate who are suffering for lack of the necessaries of life. If proper provision is not made by the trustees, the matter may be referred to the county supervisors, who have final control in the matter. All bills are paid by the county. In many counties, a poor farm is established for the purpose of caring for such indigent people. If parties from other counties or other States move into any county, and give evidence of inability to care for themselves, they may be warned to return to their own homes; but, if not warned within a year after their arrival, they obtain residence in that county and must be cared for there. If, having been warned within the year, they do become dependent upon the county, they may be returned to their home county at the expense of that county.

6. The trustees are *ex-officiis* the fence viewers of the township, with power to settle disputes over partition fences.

7. The trustees must exercise careful supervision over the spending of public money. At their Novem-

VOTING PRECINCTS.	GOVERNOR.				LT.-GOVERNOR.				JUDGE SUPREME COURT.				SUPT. PUBLIC INSTRUCTION.				RAILROAD COMMISSIONER.			
	Jackson.	Boies.	Joseph.	Mitchell.	Dungan.	Bestow.	Anderson.	Reed.	Robinson.	Cliggitt.	Weeks.	Harvey.	Sabin.	Knoepfler.	Woodrow.	Mix.	Luke.	Bowman.	Idle.	Dutton.
Lester	96	96	....	5	96	96	....	5	96	96	....	5	96	96	....	5	96	96	....	5
Bennington	66	65	....	....	66	93	....	....	66	93	....	....	66	93	....	....	67	93	....	....
Mt. Vernon	82	87	5	2	81	88	6	2	81	88	6	2	81	88	6	2	81	88	5	3
Washington	54	23	18	2	53	21	20	3	53	21	20	2	53	22	19	2	53	21	21	2
Union	39	40	1	3	59	39	1	3	59	39	1	3	59	39	1	3	59	39	1	3
Barclay	67	80	....	8	66	80	....	8	69	77	....	8	69	77	....	8	69	77	....	8
Poyner	89	118	1	1	89	117	1	1	89	117	1	1	89	117	1	1	89	117	1	1
East Waterloo township	113	85	1	4	113	83	1	4	114	84	1	4	112	83	2	5	113	82	2	4
Waterloo—																				
Third ward	282	220	2	2	284	217	1	1	284	217	2	1	284	217	1	1	283	218	1	1
Fourth ward	328	142	....	8	326	140	....	4	329	138	....	4	328	140	....	3	327	140	....	4
Waterloo township	61	33	....	2	61	33	....	2	61	33	....	2	61	33	....	2	61	33	....	2
Waterloo—																				
First ward	218	156	3	12	231	149	3	4	235	149	1	4	233	149	1	6	235	149	1	4
Second ward	223	115	....	6	228	113	....	1	228	113	....	1	228	113	....	1	229	112	....	1
Cedar Falls township	128	67	4	3	129	63	3	3	128	53	3	3	129	64	3	3	128	63	3	3
Cedar Falls—																				
First ward	53	78	1	3	54	77	1	1	55	77	1	....	54	78	1	....	55	77	1	....
Second ward	118	82	1	3	117	82	1	2	118	80	1	2	119	81	1	2	116	81	2	2
Third ward	117	74	2	4	118	70	3	3	118	70	3	3	118	70	3	3	118	70	3	3
Fourth ward	198	55	....	15	210	51	....	7	210	51	....	7	212	51	....	5	210	51	....	7
Fox	35	122	....	....	35	122	....	....	35	122	....	....	34	123	1	....	35	122	....	....
Cedar	48	70	....	....	48	70	....	....	48	70	....	....	48	70	....	....	48	70	....	....
Orange	123	36	4	1	124	33	5	1	123	33	4	1	123	33	4	1	123	33	4	1
Black Hawk	118	104	5	1	117	104	5	1	118	103	5	1	117	103	6	1	117	103	5	1
Spring Creek	75	55	2	....	74	54	1	....	74	54	1	....	74	54	1	....	74	54	1	....
Big Creek	265	135	2	6	262	133	2	5	261	134	2	5	262	133	2	5	261	133	2	5
Eagle	82	86	3	....	82	87	3	....	82	86	3	....	82	86	3	....	82	86	3	....
Lincoln	48	78	1	4	49	78	1	2	49	78	1	2	49	78	1	2	49	78	1	2
Total	3144	2332	56	95	3172	2293	58	63	3183	2285	57	61	3180	2291	57	61	3178	2285	57	62

ber meeting they settle with the superintendents of roads (if any have been appointed), and each year they file with the county board of supervisors a full and itemized account of all moneys received and disbursed for road purposes during the year.

8. There are, as a rule, no public buildings belonging to the township; but a law was passed by the twenty-sixth general assembly in 1896, authorizing townships to levy a tax to build public halls in which to hold elections and public meetings. (Code § 567.) When this is done, the trustees have charge of building the hall, but after it is built the township clerk acts as its custodian.

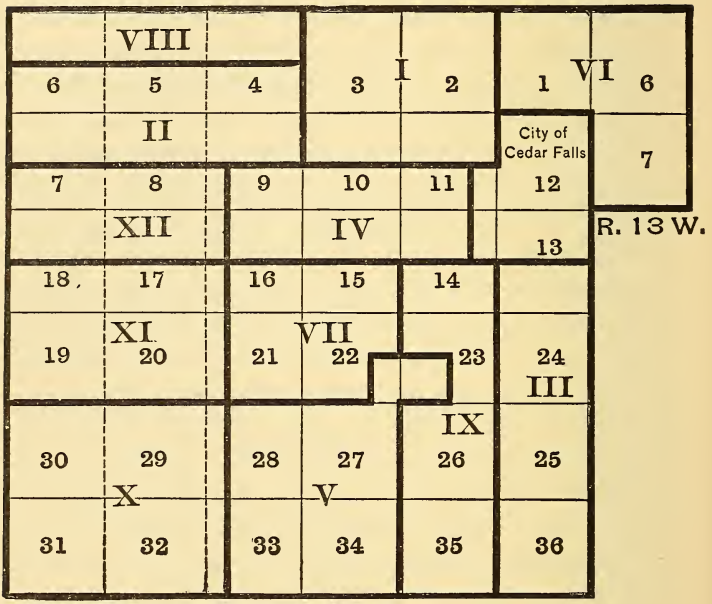
9. In connection with public cemeteries, the trustees have power to inclose, improve, and adorn the grounds, construct avenues, erect proper buildings, and prescribe general rules concerning the management of the cemeteries. At their April meeting they may levy a tax for the purchase or maintenance of cemeteries. They also have the power to sell a township cemetery to a private corporation for cemetery purposes.

140. Classification of Trustees.—The board of trustees, as we see from the above, acts both as a legislative and as an executive body. All three trustees are now elected at the general election, once in two years. Before the adoption of the biennial election plan (in 1904), however, they were elected one each year, for terms of three years, and thus a majority of the board were always experienced members. This plan of dividing a governing body into classes with terms of office expiring at different times, is still followed in the board of supervisors and in the State senate.

141. The Township Clerk.—This officer acts as secretary of the board of trustees on all occasions, and consequently is the secretary or clerk of the board of health, the board of canvassers of elections, the board of review of taxes, etc. The clerk also acts as one of the clerks of elections. Immediately after the election of the officers in his township, he sends a written notice thereof to the county auditor, stating the names of the persons elected and the time of election. On the morning of the day of each general election, before the opening of the polls, he must post in the place where such election is held, a statement showing the receipts of money and disbursements in his office, such statement to be certified by the trustees of the township. He administers the customary oath to township officers, judges of elections, clerks of elections, and superintendents of roads before they enter upon the duties of their respective offices. The township clerk acts as treasurer of the township. He handles the money spent on the township roads, and has charge of the books, records, and all township property, such as scrapers and machinery for the repair of roads.

142. Superintendents of Roads.—By the one-road-district plan, the superintendents of roads are under the direction of the township trustees. They have nothing to do with the collection of the property road tax, but they do direct the working out of the poll tax. Under the old system the road supervisor was also the collector of the property tax in his road district; and each year the trustees might allow a portion of the property road tax to be paid in labor, and fixed the amount to be allowed for the labor of a man, and for a man and a team.

FORMER ROAD DISTRICTS OF CEDAR FALLS TOWNSHIP, BLACK HAWK COUNTY, IOWA.



Township 89 N., Range 14 W., of 5th Principal Meridian.

Roman numerals indicate old road districts with boundaries in heavy black lines.

Figures indicate sections in the Congressional Township, with boundaries in lighter lines.

Notice that the *Civil* Township of Cedar Falls lies mostly in *Congressional* Tp. 89 N, R. 14 W., but includes sections 6 and 7 of Tp. 89 N, R. 13 W.

Notice also that the *Municipality* of Cedar Falls lies within the limits of Cedar Falls Civil Township, and is entitled to its own constables, justices and assessor. It also controls its own highways, and has a voting precinct in each ward.

All property taxes, including road tax, are now payable to the county treasurer at the county seat, but deputies are often appointed in the larger towns, who collect for and report to the county treasurer. The election of

township collectors at the option of county supervisors, as provided for in McClain's Code of 1888, § 541, is not allowed by the new law.

143. Constables and Justices of the Peace.—Every township is entitled to two constables, who act as peace officers and serve all warrants[1] for arrest and for search of property, and all notices legally directed to

---

[1] WARRANT OF ARREST.

....

STATE OF IOWA, }
GRUNDY COUNTY. }

TO ANY SHERIFF, CONSTABLE, MARSHAL, OR PEACE OFFICER IN THE STATE:

Information upon oath having been this day laid before me by....

.....that the crime of.....

.....has been committed, and accusing.....

.....

.....

thereof:

You are therefore commanded forthwith to arrest the above named

.....

and bring.....before me at my office in.....

or in case of my absence or inability to act, before the nearest or most accessible Magistrate in this county.

Witness my hand at.....the.....day of.....19

.....Justice of the Peace.

them by the trustees, clerk of the township, or any court in the county. They are the regular ministerial officers of justice of the peace. Each township is entitled to two justices of the peace, who try petty cases, having jurisdiction over criminal cases involving not more than thirty days imprisonment in the county jail or one hundred dollars fine, and all civil cases involving not more than one hundred dollars, or not more than three hundred dollars if both parties consent.[1] The justice's court is not a court of record; he keeps his own records of the proceedings of his court. He also solemnizes marriages. Code § 3145.

144. Assessor.—One assessor is elected in each township. He receives from the county auditor two assessment books to be kept in duplicate. In these books he enters a list of all property holders and a statement of their property, both real and personal, with the assessed value of the same. By the new law (1897) property is assessed at one-fourth of its cash value. The tax assessor returns one of his books to the board of trustees, who examine it at their April meeting for the purpose of equalizing the taxes among the individuals of the township, and correcting any injustice that may have been done. Any one feeling that injustice has been done him in the assessment, may appeal to the board of trustees at their April meeting, while they are sitting as a board of review. If he fails to do so at this time, he will find that they can give no attention to his protest, and that the other assessment book has been returned to the county auditor as clerk of the board of supervisors, who receive the books from

[1] For exceptions see § 305.

all townships, compare the taxes as reported in them, and equalize the assessments between townships. No appeal can be made by an individual to the county supervisor, but appeal may be made to the district courts, within twenty days after the board of review adjourn. (Code, § 1373.) The county supervisors, however, have power to remit the taxes of those who, by reason of misfortune or great indigence, are considered unable to pay their taxes. The county supervisors of each county report to the executive council (260) of the State, who equalize between counties.

TABLE SHOWING STATE, COUNTY, AND LOCAL TAXES IN BLACK-HAWK COUNTY, IOWA, 1896.

			Mills on Dollar	Estimated by	Levied by
STATE TAX.			2.8	Gen. Assembly.	Gen. Assembly.
COUNTY TAX.					
County ..... 3.					
County School..... 1.					
County Bridge..... 1.			6.7	County Supervisors.	County Supervisors.
County Poor..... .... 1.					
County Insane..... .5					
Soldiers' Relief 2					
CEDAR FALLS.					
School Tax.					
Teacher's Fund.....13					
Contingent Fund... 4.3	19.9		34.9	School Directors.	County Supervisors.
School House Fund 2.6					
Corporation.					
General 10					
Sinking..... 2					
Sewer..... 2	15.			City Council.	County Supervisors.
Library..... 1					
Water Tax.					
For those within water-limits..... 5	5		5.		
Total Possible.....			49.4		

Most counties have also a poll tax of fifty cents on all male adults.

145. Militia.—The township assessor also enters in these books a list of all able-bodied men between the ages of eighteen and forty-five years, as belonging to the State militia and liable to military service. It is from this list that the drafts are made for soldiers in time of war, when volunteers are not numerous enough to serve the needs of the country. Students of United States history will remember the terrible riots in 1863, when President Lincoln ordered a draft from the militia of the United States to aid in carrying on the war against the Rebellion. The men between eighteen and forty-five years of age, so enrolled, comprise the unorganized militia. There is also an organized militia, consisting of the Iowa National Guard. This includes all military companies organized in the towns and cities of Iowa, under the control of the State and its various military officers. By virtue of their special enlistment, they are liable to be called out by the Governor in time of public danger, but cannot be sent beyond the borders of the State without their own consent.[1] The Governor of the State is *ex-officio* commander-in-chief of the Iowa militia. The next officer in rank and the active commander is the Adjutant General, who also has charge of the State arsenal and grounds, and all military stores and affairs. Honorably discharged soldiers of the United States army, and firemen during active service, and after ten years of such active service, are exempt from military duty under the State. Firemen and members of the National Guard are also exempt from all poll taxes and from jury duty.

[1] Except on requisition of the President.

CHAPTER XIII

MUNICIPALITIES

146. Classification.—Municipalities (cities) are divided into three classes, determined by population.

1. Cities of the first class, with a population of 15,000 and upwards.

2. Cities of the second class, with a population of 2,000 and less than 15,000.

3. (Incorporated) Towns, including all municipal corporations with a population of less than 2,000.

Any census taken by the authority of the State, or of any town or city, and duly reported to the secretary of state, is the legal basis for classifying the municipality. Towns platted and unincorporated are, by the new law (1897), called villages, but are not ranked as municipalities.

147. The (Incorporated) Town.—When a small settlement begins to build stores, and assume the appearance of a village, it is often thought best to incorporate it as a town, with a government better adapted than that of the township to the social and business relations of the community. The steps necessary are as follows: A petition for incorporation, signed by at least twenty-five qualified voters of the settlement, is presented to the district court, accompanied by a description of the territory to be embraced in the proposed town, an accurate plat or map of the town, the proposed name, and satisfactory proof of the number of inhabitants within the limits of said

territory. A commission of five members is then appointed by the court to advertise and conduct an election, at which the voters living within the platted territory shall decide, by a majority vote, for or against incorporation. If the vote is favorable, the same commissioners conduct another election to choose the proper officers, under whom the town government is organized.

148. The Officers of an Incorporated Town.*

Officers.	No.	Term.	How Chosen.
Mayor	1	2 years.	Popular vote.
Council	5	2 years.	Popular vote.
Clerk	1	Pleasure of council.	App'nted by council.
Assessor	1	2 years.	Popular vote.
Treasurer	1	2 years.	Popular vote.
Health Physician	1	Pleasure of mayor.	App'nted by mayor.
Street Commissioner	1	Pleasure of mayor.	App'nted by mayor.
Marshal	1	Pleasure of mayor.	App'nted by mayor.

149. The Council and their Duties.—The council consists of five trustees elected, under the new law, all together every two years. (Formerly there were six trustees, two being elected each year.) The duties of the council are similar to those of the trustees of the township, except that they have special legislative powers, and do not act as overseers of the poor.

The legislative power of the council is concerned with the local government of the town. The local laws

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* The municipal officers, terms, etc., on this and the following pages, are given according to the law of 1907, which provided that the new plan should go into effect in 1909, 1910, or 1911, in different towns and cities.

"All persons appointed to office in any city or town may be removed by the officer or body making the appointment, but every such removal shall be by written order which shall give the reasons therefor and be filed with the city clerk." Code § 657 as amended by Laws of 1907.

Vacancies in any elective office in an incorporated town are filled by the council. Code § 668, (9).

that they pass are called ordinances. The mayor is the presiding officer of the council, with the right to vote only in cases of a tie. He may, however, veto any ordinance, if he decides to do so within fourteen days from the time it was passed; and the council may then pass it over his veto only by a two-thirds vote. (Code, § 685.) Money is drawn from the treasury by order of the council on warrants signed by the mayor and town clerk. In elections the councilmen and clerk perform duties similar to those of township trustees and clerk. Returns of the general election in November are made to the county auditor, but the returns of the municipal election in March are made to the town clerk, who retains them and the sealed ballots for the six months allowed for contesting an election. The council act as a board of health and in April they sit as a board of review for the equalization of assessments between individuals.

The mayor is the chief magistrate of the town. The principal duties of the other officers can be inferred from their titles, and from the table on page 177. The marshal is appointed by the mayor, and may be discharged by him. Formerly the consent of the council was essential, but the mayor now has full control of his appointment and removal. By the law of 1907, also, the street commissioner is appointed by the mayor instead of by the council.

150. Cities of the Second Class.—When there are two thousand inhabitants in an incorporated town, as shown by a State or federal census, it is required to reorganize as a city of the second class. The officers of such a city are quite similar to those of an incorporated town, as shown in the following table:

OFFICERS OF A CITY OF THE SECOND CLASS.

Officers.	Term.	How Chosen.
Mayor	2 years.	Popular vote.
Council*	2 years.	Popular vote.
Clerk	Pleasure of council.	App'nted by council.
Assessor	2 years.	Popular vote.
Treasurer	2 years.	Popular vote.
Solicitor	2 years.	†
Health Physician	Pleasure of mayor.	App'nted by mayor.
Street Commissioner	Pleasure of mayor.	App'nted by mayor.
Marshal	Pleasure of mayor.	App'nted by mayor.

151. Ordinances and Wards.—A city of the second class must have two wards, and cannot have over five. One councilman is elected from each ward every two years, and two councilmen are elected at the same time by the city at large. (Formerly one councilman was elected by each ward annually, and served two years, thus giving cities of the second class a council half of whose members were always experienced.)

Ordinances are passed by the council, subject to the mayor's veto, just as in the town government (149); and in general the duties of the city officers are the same as those of town officers.

The council would seem by analogy to be the proper authorities to act as overseers of the poor, just as the trustees do in the township, but this is not the case. The county supervisors instead appoint an overseer of the poor to act for them in cities, and there are private organizations, such as the Woman's Relief Corps and the King's Daughters, that inquire into cases of destitution and give aid to the worthy poor.

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* One for each ward and two at large.

† Popular vote in cities of over 4000; appointed by council in smaller cities.

152. Number of Cities of the Second Class.—In 1905 there were eighty-two cities of the second class in Iowa. Of these Fort Dodge, with a population of 14,369, was the largest, and Valley Junction, with a population of 2009, was the smallest.

153. Cities of the First Class.—Cities of fifteen thousand inhabitants are required to organize as cities of the first class, and the list of officers varies with the size of the city. The following table shows the principal officers in a city of the first class:

OFFICERS IN A CITY OF THE FIRST CLASS.

Officers.	Term.	How Chosen.
Mayor	2 years.	Popular vote.
Council*	2 years.	Popular vote.
Clerk	Pleasure of council.	By the council.
Auditor	2 years.	Popular vote.
Assessor	2 years.	Popular vote.
Treasurer	2 years.	Popular vote.
Solicitor	2 years.	Popular vote.
City Engineer	2 years.	Popular vote.
Health Physician	Pleasure of mayor.	App'nted by mayor.
Street Commissioner †	Pleasure of mayor.	App'nted by mayor.
Marshal	Pleasure of mayor.	App'nted by mayor.
Police Judge	2 years.	Popular vote.
Judge of Superior Court ‡	4 years.	Popular vote.

The council passes ordinances as in other municipalities, and in general what is said in § 149 applies to

* One for each ward and two at large.

† In cities that have a board of public works, the street commissioner is appointed and removed by this board instead of by the mayor. Such board of public works, consisting of two members appointed by the mayor, is established by law in cities of 50,000 or more, and may be established by the council in cities of 30,000 or over. In cities having more than 20,000 inhabitants there is established by law a board of police and fire commissioners, consisting of three commissioners appointed by the mayor for terms of six years. Some cities elect three park commissioners.

‡ This court is established, at the option of the people, in place of the police court in cities of over 4000.

cities of the first class as well as to second-class cities and towns. The council consists of one councilman from each ward and two at large. By the law of 1907 all are elected at the same time, once in two years. (Formerly half were elected each year.)

154. Number.—There were seven cities of the first class in Iowa in 1905. The names of these cities and the population of each is given in the following list:

FIRST-CLASS CITIES.

1.	Des Moines	75,626
2.	Sioux City	40,952
3.	Burlington	25,318
4.	Council Bluffs	25,231
5.	Clinton	22,756
6.	Ottumwa	20,181
7.	Waterloo	18,071

Several cities in Iowa have governments outlined in special charters granted them by the General Assembly. These cities, with their populations, were as follows in 1905:

SPECIAL CHARTER CITIES.

1.	Dubuque	41,941
2.	Davenport	39,797
3.	Cedar Rapids	28,759
4.	Muscatine	15,087
5.	Keokuk	14,604
6.	Wapello	1,393

CITIES UNDER COMMISSION.—The thirty-second general assembly provided that any city with a population of 25,000 or over might by majority vote of the people organize under a new law. This "commission" plan of city government includes a mayor and four council-

men elected by the city at large and constituting a council for the exercise of all the duties and powers of the mayor, city council, various administrative boards, solicitor, assessor, treasurer, auditor, city engineer, and other executive and administrative officers of a city of the first class. Each member of this council acts as the head of one administrative department of the city government. The council is given full powers of appointment and removal of city officers and employees.

SUGGESTIVE QUESTIONS.

1. The marshal was formerly chosen by the council, and could be removed only by their votes. Is the present plan an improvement?

2. What appointing power was granted to the mayor of Brooklyn by the charter of 1882? (Bryce's *American Commonwealth*, Vol. I., pp. 625–627.)

3. What vital relation is there between authority and responsibility?

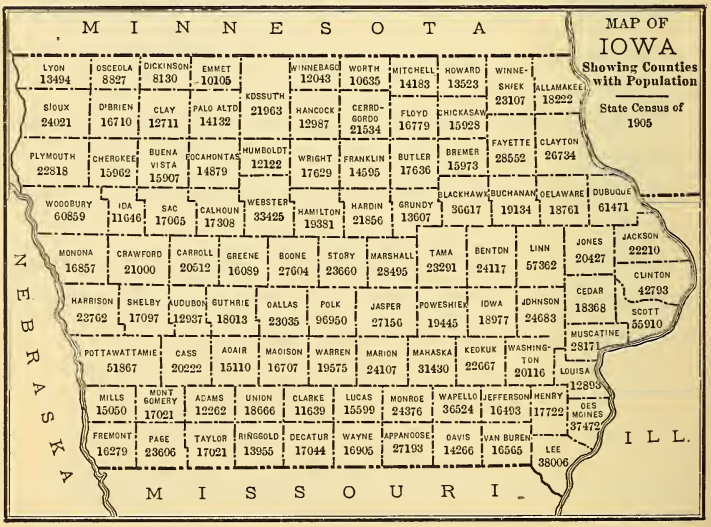
4. What do you know of the municipal reform movement?

5. What of the "commission" plan of municipal government? (Read about the government of Galveston since the Galveston flood of 1900.)

CHAPTER XIV

COUNTY GOVERNMENT

155. County Government.—The State of Iowa is divided into ninety-nine counties. They usually



contain sixteen Congressional townships, and the constitution forbids any new counties to be organized

containing less than four hundred and thirty-two square miles, or twelve Congressional townships. (Constitution, Art. XI., Sec. 2.) Any change in the boundaries of a county requires the consent of the State Legislature, as well as that of all the counties affected. (Constitution, Art. III., Sec. 30.) There is a capital, or county seat, in each county, where the county buildings are located, and where the officers keep the records and attend to all necessary business. This county seat is located by the vote of the people, and can be changed only by a popular vote, which has been demanded by a petition from a majority of the legal voters.

156. Two County Seats.—Some counties, like Pottawattamie and Lee, have two county seats. This occurs because of the size of the county or inability of the people to agree on one location. In Lee county, one of these county seats is at Fort Madison, and the other at Keokuk. There are two sets of books or records kept in the offices of the clerk, recorder, and treasurer, *i.e.*, one set at either county seat, and the sheriff has a deputy at each place. The district court meets at Fort Madison in January, April, June, and October, and at Keokuk in March, May, September, and November. The board of supervisors meet at Fort Madison, and the auditor's office and its records are there, though there is a deputy auditor at Keokuk. The county superintendent usually has his office at his home, in whatever part of the county that may be.

157. The County Officers.—The officers of the county are mentioned in the following table:

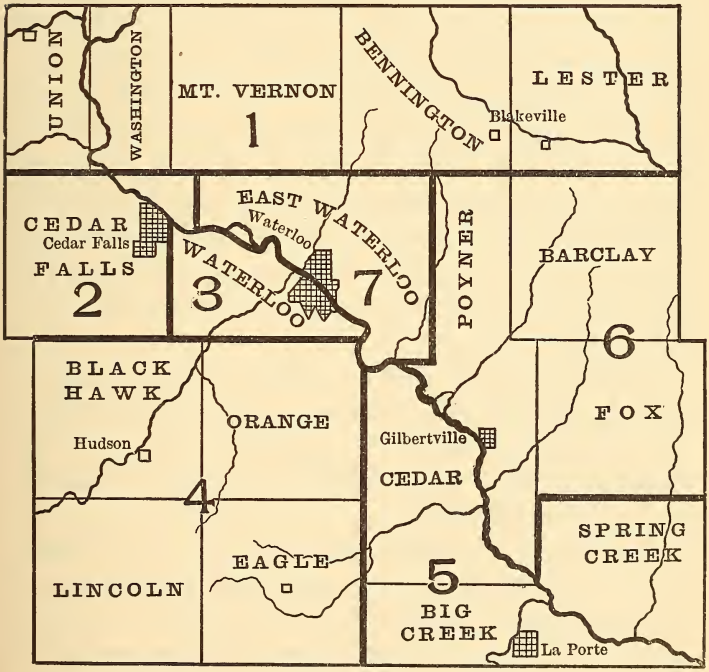
COUNTY OFFICERS.

Officers.	No.	Term.	How Chosen.	Bond.	Pay.
Supervisors.	3, 5, or 7.	3 years.	Popular vote, $\frac{1}{3}$ for every year.	None.	Per diem and mileage.
Auditor.	1.	2 years.	Popular vote, even years.	$5,000 or more.	Salary.
Treasurer.	1.	2 years.	Popular vote, even years.	$5,000 or more.	Salary.
Co. Attorney.	1.	2 years.	Popular vote, even years.	$5,000 or more.	Salary.
Recorder.	1.	2 years.	Popular vote, even years.	Fixed by supervisors.	Salary.
Clerk of Court.	1.	2 years.	"	$5,000.	Salary.
Sheriff.	1.	2 years.	Popular vote, even years.	$5,000.	Salary and fees.
Coroner.	1.	2 years.	Popular vote, even years.	Fixed by supervisors.	Fees.
Surveyor.	1.	2 years.	"	"	Per diem.
Notaries Public.	Indefinite.	3 years.	Appointed by Governor.	$500.	Fees.
Superintendent of Schools.	1.	2 years.	Popular vote, even years.	Fixed by supervisors.	Salary.
Board on Uniform Text-books.	5, 7, or 9.	Supervisors, Auditor and County Superintendent of Schools.			

158. The Board of Supervisors.—The number of supervisors is three, five, or seven, at the option of the people of the county, and may be changed if the people wish. The number is *not* determined by population. They may be chosen by the votes of all electors in the county on the general ticket, or the county may be divided into supervisor districts, one for each member. In the former case, no two supervisors can be chosen from the same civil township. In the latter case, the electors of each district vote for one supervisor who is a resident of that district. Of course, election on a general ticket gives the better

chance of selecting the most efficient men, but sectional jealousy often demands electing by districts. Below is a map of Blackhawk County showing its seven supervisor districts.

BLACKHAWK COUNTY, IOWA
With Townships and Supervisor Districts.



159. The Duties of the County Supervisors.—These are similar to those of the township trustees, but more extensive. They are both legislative and executive in their powers.

(1.) *Levying Taxes.* They determine the amount of the tax to be raised for county purposes, and act

as a board of equalization of taxes between townships.

(2.) *Board of Review.* Township taxes are reported to the board of supervisors, and compared. When it is evident that one township has been assessed at a lower valuation than others, for instance at one-fifth of the real value of property, when the other townships have been assessed at one-fourth or one-third, the supervisors, as a board of equalization, raise the assessment of that township to make it equal with the rest. The supervisors may remit taxes of individuals on account of poverty, but they may not equalize between individuals, that being the duty of township trustees and city councils, and appeals from these bodies can be made only to the courts and within twenty days after their meeting as a board of equalization. Code, § 1373.

(3.) *Canvassing Board.* The board of supervisors also canvass the election returns reported to them by the township trustees, and report the votes on State officers to the State board of canvassers, viz., the executive council (260).

(4.) *The Poor.* The county supervisors have charge of the poor-house, or poor-farm, and are the proper parties to whom appeal is made in behalf of those who are in destitute circumstances, and for whom the township trustees do not make suitable provision. The question of the right to county aid has been discussed in a previous chapter. (139).

(5.) *Highways.* The main roads used by the county and the bridges over streams crossed by these are constructed at the expense of the county, the money

being raised by a bridge tax. A tax of one mill is also allowed to provide for the care of the roads. When a main thoroughfare approaches a stream at a point not suitable for bridging, the private land along the bank of the stream may be condemned (see Right of Eminent Domain, 192) by the board of supervisors, and the road extended along the bank to a place more favorable for a bridge.

(6.) *Finances.* The finances of the county are in the hands of the supervisors, with certain restrictions prescribed by law. They approve all claims brought against the county, or, having examined into the case, decline to allow the bill. Claims which are allowed are paid by the county treasurer on an order or warrant signed by the auditor.

The regular meetings of the board of supervisors are held on the second secular day in January, the first Monday in April and June and the second Monday in September, also the first Monday after the general election in even-numbered years, and the first Monday in November in odd-numbered years. Soon after each meeting of this board, a report is made in the county papers. These reports sometimes contain very instructive reading for students of civil government.

160. The Public Buildings.—These may be such as the people of the county authorize. Provision must naturally be made for a jail, court-house, and county offices. In some counties these are combined in one, or in others, as Buchanan County, there are three. These buildings are under the control of the board of supervisors, who let contracts for their erection, unless the expense is over five thousand dollars,

in which case the approval of the electors of the county must be secured. The grounds on which the county buildings stand are also under the control of the supervisors, and they may purchase sites for county buildings without referring the matter to the electors, unless the expense exceeds two thousand dollars.

161. The County Auditor.—The county auditor acts as clerk of the board of supervisors, recording the proceedings of their meetings, and publishing the same in the leading county papers. He acts as general accountant and signs all warrants on the treasurer for the payment of claims approved by the board of supervisors. He furnishes the ballots and two poll-books for each election precinct, and afterwards receives from the clerk (141) the returns of elections, including the abstract of votes cast for each candidate, one of the poll-books, and the ballots themselves strung on a wire, the ends of which are twisted together and sealed. These votes are preserved for six months, the time allowed by law for contesting an election. He furnishes also to each assessor in the county two assessor's books, in which are to be recorded the various taxes due from each tax-payer, and a list of all able-bodied men between the ages of eighteen and forty-five (145). After these books have been filled out by the assessors and corrected by the boards of equalization, one of them is returned to the auditor, and he prepares the tax lists for the county treasurer. The county auditor has charge of the permanent school fund for his county, and loans the same, apportioning the accruing interest among the school districts on the basis of school population.

162. The County Treasurer.—The county treasurer receives and holds all moneys belonging to the county. His books show all the receipts and expenditures, and are always open to the inspection of the supervisors. All taxes are paid to him, with the exception of cases where he appoints deputies in different towns. Taxes are due the first of January of each year, but they may be paid in two equal installments, on the first of March and on the first of September. If the first installment is not paid by the first of April, there is a penalty of one per cent. a month from March 1 on the whole amount; and on the first Monday in December the real estate on which taxes are still delinquent is required to be sold by the treasurer of the county. The title given to the purchaser is called a tax-title, and is subject to certain privileges of redemption by the delinquent tax-payer.

163. The County Attorney.—The county attorney is the legal advisor of the supervisors and other county officers, and appears for the State in the prosecution of criminals, or in civil cases where the county is involved.

164. The County Recorder.—The county recorder keeps a verbatim copy of all deeds and mortgages, with the exact time of registering each.

(1) A deed is a written document conveying the ownership of real property from one party to another. The original deed, by which real estate is granted by the United States government to an individual or corporation, is called a *patent*.

(2.) A mortgage is a deed conditioned on the nonpayment of certain obligations mentioned therein.

Mortgages are given on real estate and on personal property; the latter are called chattel mortgages.

165. Buying Real Estate.—When one buys real estate, it is necessary to consult the books of the county recorder to be certain that the title is clear, and that there are no mortgages recorded against it. If there is such a mortgage, it must be satisfied by the new owner, even though he was ignorant of its existence, and paid full value for the property. If the mortgage had not been entered on the books of the county recorder, the note which it was intended to secure cannot be collected from the new owner of the property. Sometimes several mortgages are given on the same property, and are called first, second, and third mortgages. These must be satisfied in their order, and, as the mortgage first recorded is, generally speaking, the first mortgage to be satisfied, the date and hour of registration is a matter of importance.

166. The County Clerk.—The clerk of the district court, usually called the county clerk, keeps the records, papers, and official seal of the court. He also keeps various books in which are recorded the judgments which the court has granted as satisfaction to parties in civil suits; also various other claims, such as mechanic's liens, attachments, and other incumbrances on property. Here, then, on the books of the county clerk is another list of items important to purchasers of property, inasmuch as the property, even after changing hands, is liable to sale for satisfaction of these liens. There are, then, three places where incumbrances are recorded, and which should be consulted when one buys property:

(1.) The treasurer's books, for evidence of delinquent taxes.

(2.) The recorder's books, for mortgages.

(3.) The clerk's books, for judgments and other liens.

One may obtain an abstract of title for a piece of property by consulting any person who keeps a set of abstracts. This person charges a price for the paper, which he guarantees to contain a statement of all liens recorded in these three places, as well as a full history of past changes in ownership.

167. Other Duties of the County Clerk.—The county clerk, under the supervision of the district court, appoints administrators and guardians, and attends to the probating of wills, and various other duties formerly pertaining to the circuit court (274). He keeps a register of births and deaths, and issues marriage licenses. He makes annual reports to the governor, describing the nature of the criminal offenses that have come before the county court.

168. The Sheriff.—The sheriff is the executive or ministerial officer of the district court. He serves all papers issued by the court, such as subpœnas for summoning witnesses, search warrants, and warrants for arrest (143), and may serve similar papers for lower courts. He has charge of the county jail and the prisoners. He gives notice of general and special elections, and serves as the peace officer of the county.

169. The Coroner.—The coroner investigates any case of death under unusual or suspicious circumstances, and summons a jury of three men to "sit on the case" and render a verdict as to the probable

cause. He may issue a warrant for the arrest and examination of any person whom the jury may name. He has authority also to subpœna witnesses for the inquest, as the sitting of the jury is called. When the sheriff is absent, or unable to serve on account of relationship to the parties to be arrested in any case, the coroner serves the papers.

170. Notaries Public.—When important papers need signature, it is quite necessary that some official person should guarantee that the signatures are authentic, and are made freely and without constraint. This is especially true in regard to deeds, mortgages, and other papers which involve title to property. Notaries public are men selected and commissioned by the governor to give such guarantee, which they do by attaching a slip of paper to the document in question, stating that they know the parties and that the signers have declared their signatures to be free from constraint of every kind. This is signed by the notary and stamped with the notarial seal. Notaries' commissions all end July 4, 1909, and each third year after that.

171. The County Superintendent.—The superintendent conducts the examination of teachers, but the answer papers are marked, and certificates issued, under the supervision of the State educational board of examiners. He is expected to provide an institute for the instruction of his teachers in methods of teaching, and local meetings for discussion of education, and to promote the interests of the schools in his county. He settles disputes about the removal of teachers and hears complaints of various kinds touching school affairs not involving money claims or the election of a school officer.

COMPARATIVE VIEW OF IOWA GOVERNMENT.

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DEPARTMENT.	STATE.	COUNTY.	TOWNSHIP.	INCORPORATED TOWN.	CITY OF SECOND CLASS	CITY OF FIRST CLASS	REMARKS.
LEGISLATIVE.	General Assembly. Senate. House of Rep.	Board of Supervisors. 3, 5, or 7.	3 Trustees.	Council of 5.	Council 1 to Each Ward, and 2 at Large.	Council 1 to Each Ward, and 2 at Large.	Brackets ( ) enclosing the name of an office indicates that it is an appointive office. The appointing power is indicated by abbreviations, thus: (Clerk by C.) means, a clerk is appointed by the council.
EXECUTIVE.	Ex. Council. { Governor. Secretary. Auditor. Treasurer.	Supervisors.	Trustees.	Mayor and Council.	Mayor and Council.	Mayor and Council.	
		Auditor.	Clerk.	(Clerk by C.)	(Clerk by C.)	(Clerk by C.)	
		Treasurer.	Clerk acts as Treasurer.	Treasurer.	Treasurer.	Auditor. Treasurer.	
	Attorney Gen.	County Atty. Recorder. Clerk of Court.			Solicitor.*	Solicitor.	
		Sheriff. Coroner. (Notaries Pub. by Governor.)	Constables.	(Marshal by M.)	(Marshal by M.)	(Marshal by M.)	
	Exec. Council		Assessor.	Assessor.	Assessor.	Assessor.	
	3 R. R. Com'rs. †	Surveyor.	(Supt. of R'ds by T.)	(Str. Commissioner by M.)	(Str. Commissioner by M.)	(Str. Commissioner by M.) City Engineer.	
	Supt. Pub. Ins.	County Supt.		(Prin. Sch'ls by B'd Dir.)	(Supt. Sch'ls by B'd Dir.)	(Supt. Schools by B'd Dir.)	
Education.	B'd Ed'n'l Ex.	B'd on Unif'm Text Books.	Board of Directors.	Board of Directors.	Board of Directors.	Board of Directors.	
Equalization of Taxes.	Exec. Council.	Supervisors.	Trustees.	Council.	Council.	Council.	
Election Returns.	Exec. Council	Supervisors.	Trustees.	Council.	Council.	Council.	
Health.	(State Board of Health.)		Trustees.	Council. (H'lth Phys. by M.)	Council. (H'lth Phys. by M.)	Council. (H'lth Phys. by M.)	
Poor.		Supervisors.	Trustees.				
JUDICIAL.	Supreme Court. 6 Judges.	20 District C'ts in the State.	2 Justices of the Peace.	Justice of P'ce Mayor's Court.	Justice of P'ce Mayor's Court or Superior Court Optional if 4000 population.	Justice of P'ce Police Court or Superior Court Optional.	

* Appointed by council in cities of less than 4000.

† Food and Dairy Commissioner, Mine Inspectors, etc., are State officials not analogous to any County, etc.

An appeal may be taken from his decision to the State superintendent. The state provides fifty dollars a year for each county to aid in defraying the expenses of the county institute, and each teacher in attendance pays a membership fee of one dollar. Every teacher pays one dollar for an examination fee, and one dollar a year for the registration of his certificate in the county where he teaches. The county superintendent receives reports from the secretaries of the various school districts, and sends an abstract of the same to the State superintendent on the last Tuesday in August of each year.

171*a*. The County Surveyor. — The surveyor makes all surveys of land in his county, and transcribes field notes and plats into a book provided for the purpose. The law holds these records *presumptively correct*. He receives a per diem and fees from the person requesting the survey. Code, § 534 and 543.

SUGGESTIVE QUESTIONS.

1. What two types of township government are found in the states west of the Alleghanies? Hinsdale's *American Government*, §§ 80-82, and *Fiske's Civil Government*, p. 92.

2. What two eastern states furnished these types?

3. Which state did Iowa follow in her township government?

4. Which did Illinois follow?

5. How was the county board of supervisors organized in New York by the law of 1703. Fiske, p. 79.

CHAPTER XV

STATE GOVERNMENT

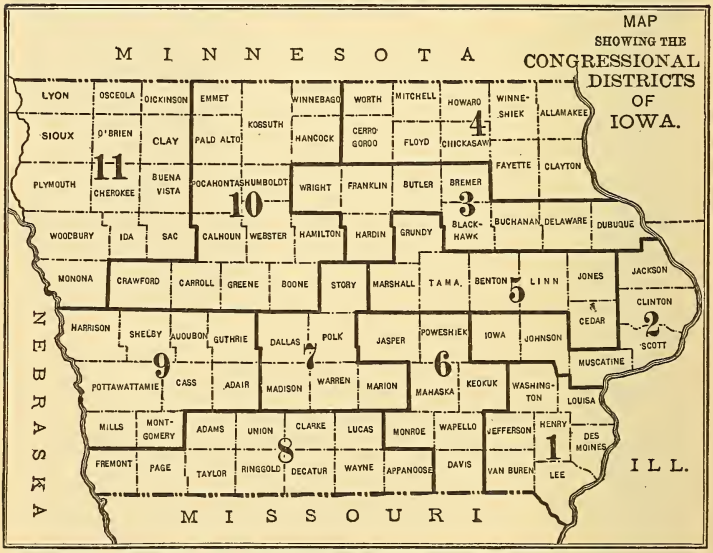
172. The Constitution.—The State government of Iowa is outlined in the Constitution of 1857. The circumstances under which this Constitution was substituted for that of 1846 have already been described in the history of Iowa (62-64). It opens with what is called the preamble, but is really both a preamble and an enacting clause. It reads as follows:

173. The Preamble.— We, THE PEOPLE OF THE STATE OF IOWA, grateful to the Supreme Being for the blessings hitherto enjoyed, and feeling our dependence on Him for a continuation of those blessings, do ordain and establish a free and independent government, by the name of the State of Iowa, the boundaries whereof shall be as follows:

Beginning in the middle of the main channel of the Mississippi river, at a point due east of the middle of the mouth of the main channel of the Des Moines river, thence up the middle of the main channel of the said Des Moines river, to a point on said river where the northern boundary line of the State of Missouri—as established by the Constitution of that State, adopted June 12, 1820—crosses the said middle of the main channel of the said Des Moines river; thence westwardly along the said northern boundary line of the State of Missouri, as established at the time aforesaid, until an extension of said line intersects the middle of main channel of the Missouri river; thence up the middle of the main channel of the said Missouri river to a point opposite the middle of the main channel of the Big Sioux river, according to Nicolett's map; thence up the middle of the main channel of the Big Sioux river,

according to said map, until it is intersected by the parallel of forty-three degrees and thirty minutes north latitude; thence east along said parallel of forty-three degrees and thirty minutes, until said parallel intersects the middle of the main channel of the Mississippi river; thence down the middle of the main channel of the said Mississippi river to the place of beginning.

MAP OF IOWA SHOWING THE CONGRESSIONAL DISTRICTS FROM WHICH REPRESENTATIVES ARE CHOSEN FOR CONGRESS OF THE UNITED STATES.



In connection with the boundaries designated here students of the history of Iowa will do well to review what is said about the Constitution proposed in 1844 (31-40). The citizens of a proposed state may suggest its boundaries, but the Federal Congress alone can determine what those boundaries shall be. Congress has power to cut up a territory into several parts,

making one part a state and reorganizing the rest into a new territory, as was done with the old Territory of Nebraska, which furnished the State of Nebraska and the Territory of Dakota; or it may make two states of one territory, as was done afterwards with Dakota. After a state has once been admitted, Congress has no power to change its boundaries, to make a new state out of part of an old one, or to unite two states in one without the consent of the state or states affected.[1] Twice in the history of Iowa has this state had a dispute with Missouri as to the boundary line between the states, and on both occasions the dispute was referred to the United States courts as the only authority having power to interpret the act of Congress by which the boundary line of northern Missouri was determined as stated in the Constitution of that state (25).

174. The Bill of Rights.—It is very common in making a new Constitution to state in an article by themselves the rights which the government must concede to the people. We shall consider this bill by sections:

ARTICLE I.

Inalienable Rights of Men.—Section 1. All men are, by nature, free and equal, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety and happiness.

Notice the similarity of language here and in the Declaration of Independence: "We hold these truths

[1] For the seeming contradiction of this statement, in the case of West Virginia, see Hinsdale's *American Government*, Sec. 597.

to be self-evident, that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness."

175. Political Power Inherent in the People.—Sec. 2. All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right, at all times, to alter or reform the same, whenever the public good may require it.

Political power, or authority over citizens, is necessarily derived from those citizens. Notice the threefold purpose of government. Only the main features of the government are determined by the constitution. A vast number of details are arranged by the General Assembly and described in statutes, which may be changed at any session of that body.

176. No State Religion.—Sec. 3. The General Assembly shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; nor shall any person be compelled to attend any place of worship, pay tithes, taxes, or other rates for building or repairing places of worship, or the maintenance of any minister, or ministry.

The purport of this section may be remembered by the following outline:

Religion:

1. Establishment.
2. Prohibition.
3. Compulsion as to
   (a) Attendance.
   (b) Financial support.

177. Religious Tests.—Sec. 4. No religious tests shall be required as a qualification for any office of public trust, and no person shall be deprived of any of his rights, privileges, or capacities, or disqualified from the performance of any of his public or private duties,

or rendered incompetent to give evidence in any court of law or equity, in consequence of his opinions on the subject of religion; and any party to any judicial proceeding shall have the right to use as a witness, or take the testimony of any other person not disqualified on account of interest, who may be cognizant of any fact material to the case; and parties to suits may be witnesses, as provided by law.

Will the fact that a man is an infidel disqualify him for the position of district judge? May a man be refused the privilege of voting on the ground of being an atheist? May a man be refused as a witness in court because he is known to be openly opposed to religion?

178. The Penalty for Dueling.—Sec. 5. Any citizen of this State who may hereafter be engaged, either directly or indirectly, in a duel, either as principal or accessory before the fact, shall forever be disqualified from holding any office under the Constitution and laws of this State.

An accessory before the fact is one who commands or counsels an offense, not being present at its commission. An accessory after the fact is one who, after an offense, assists or shelters the offender, not being present at the commission of the offense. (*International Dictionary.*)

179. Uniform Action of Laws.—Sec. 6. All laws of a general nature shall have a uniform operation; the General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities which, upon the same terms, shall not equally belong to all citizens.

This is to prevent partiality toward individuals or corporations.

180. Freedom of Speech and Press.—Sec. 7. Every person may speak, write, and publish his sentiments on all subjects, being responsible for the abuse of

that right. No law shall be passed to restrain or abridge the liberty of speech, or of the press. In all prosecutions or indictments for libel, the truth may be given in evidence to the jury; and if it appear to the jury that the matter charged as libelous was true, and was published with good motives and for justifiable ends, the party shall be acquitted.

Does this provision leave any safeguard against the abuse of freedom of speech? In cases of libel, what consideration is paid to the motives of the accused? What is the difference between slander and libel?

181. Security from Arrest and Search.—Sec. 8. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable seizures and searches shall not be violated; and no warrant shall issue but on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized.

If there is good reason to believe that a specified article has been stolen and is now concealed in a certain house, no one may enter and make search for the article without securing a search warrant from some justice of the peace or other magistrate. According to the above section, what will the justice require one to swear to before he gives him the warrant? Generally speaking, a man may not be arrested without a warrant; but there are many exceptions to this, for an officer or even a private citizen may arrest, without a warrant, any party who is caught in the act; or, when the probability of guilt is great, the formality of the warrant is sometimes ignored by the officer making the arrest. May an officer insist on searching any house because there is reason to suspect that something is concealed therein, though the warrant does not specify for what the search is to be made?

182. Trial by Jury.—Sec. 9. The right of trial by jury shall remain inviolate; but the General Assembly may authorize trial by a jury of a less number than twelve men in inferior courts; but no person shall be deprived of life, liberty, or property, without due process of law.

If a person is tried by a jury of eleven men without his specific consent to the irregularity in number, the trial is illegal and he is entitled to another trial. (Code, p. 64.) The General Assembly has authorized a jury of six in a justice court (277).

183. Rights of the Accused.—Sec. 10. In all criminal prosecutions, and in cases involving the life or liberty of an individual, the accused shall have a right to a speedy and public trial by an impartial jury; to be informed of the accusation against him; to have a copy of the same when demanded; to be confronted with the witnesses against him; to have compulsory process for his witnesses, and to have the assistance of counsel.

Prepare a topical recitation on The Rights of the Accused:

1. The kind of trial.
2. The jury.
3. The accusation.
4. Witnesses for and against the accused.
5. Counsel.

An impartial jury is secured by the privilege given both to the accused and the accuser, of challenging or objecting to any jurors who may be considered prejudiced. Challenges are of two kinds:

1. Peremptory.
2. For cause.

Peremptory challenges are made without giving any reason. Challenges for cause specify why objection is made. The number of peremptory challenges is limited; the causes for which a juror may be chal-

lenged are designated in the Code. (Code, § 3688.) If the accused has not the means to pay for counsel, the State must furnish it.

184. Indictment by the Grand Jury.—Sec. 11. All offenses less than felony, and in which the punishment does not exceed a fine of one hundred dollars, or imprisonment for thirty days, shall be tried summarily before a Justice of the Peace, or other officer authorized by law, on information under oath, without indictment, or the intervention of a grand jury, saving to the defendant the right of appeal; and no person shall be held to answer for any higher criminal offense, unless on presentment or indictment by a grand jury, except in cases arising in the army, or navy, or in the militia, when in actual service, in time of war or public danger.

Public offenses are divided into

1. Felonies.
2. Misdemeanors.

A felony is a public offense which may be punished by imprisonment in the penitentiary. All public offenses calling for less severe punishment than felonies are misdemeanors. (Code, §§ 5092-5094.) The word *crime* is used loosely and may stand for a felony or a misdemeanor. An indictment is a formal accusation by a grand jury, who examine the evidence presented, and by their action determine whether the evidence is sufficient to warrant the trial of the accused by the district court. An indictment is not necessary in cases that may be tried, as above stated, by a justice of the peace, but an appeal is allowed from the decision of the justice in *all criminal* cases, and in *all civil cases involving over twenty-five dollars.* Notice that cases in the army, navy, or the militia when in actual service, are tried by court-martial, and do not

require indictment by the grand jury. In time of war or public danger, the indictment is not always required, because public safety may demand summary action, and private rights must temporarily yield to the public good.

185. Second Trial.—Bail.—Sec. 12. No person shall, after acquittal, be tried for the same offense. All persons shall, before conviction, be bailable, by sufficient sureties, except for capital offenses, where the proof is evident or the presumption great.

There are some apparent exceptions to the first part of this section, as where fraud has been discovered in the trial.

186. Habeas Corpus.—Sec. 13. The writ of habeas corpus shall not be suspended or refused when application is made as required by law, unless in case of rebellion or invasion the public safety may require it.

Formerly it was common in England to arrest, without real cause, parties who were for any reason obnoxious to the king, and to imprison them indefinitely in the Tower of London. The same custom prevailed in France; and the Bastile was often filled with prisoners, many of whom had committed no crime, but were incarcerated for personal or political reasons. Charles Dickens, in his great historical novel, "A Tale of Two Cities," has described the liberation of such a man, a physician, who had been in solitary confinement for eighteen years.

187. Definition and Illustration.—The writ of habeas corpus is a paper which any one who is imprisoned without cause may have served upon his jailer, requiring that person to bring the prisoner

before the judge who has granted the writ, and show why the prisoner is deprived of his liberty. If the jailer does not satisfy the judge, he is obliged to release the prisoner. This writ may be served on any one who is restraining another party for whatever cause. Lately a man and wife were divorced and their son was given by the court to the father, but the mother stole the child and refused to give him up. The father appealed to a judge of the district court, who issued a writ of habeas corpus requiring the mother to bring the child into court, and show by what authority she was detaining him. The writ may be issued by any court of a grade superior to that which caused the imprisonment of the party; but as a rule the United States courts cannot interfere with those imprisoned under State laws, unless in cases where the National laws are involved. Neither, as a rule, can State courts issue a writ interfering with the action of Federal courts.

Below is a copy of a writ issued by the Superior Court of Cedar Rapids, in behalf of a man who claimed to have been imprisoned without privilege of bail. For obvious reasons we do not quote the real name of the party in the case.

Smith & Clemans filed a petition in the Superior Court for a writ of habeas corpus to secure the release of Richard Roe from the county jail at Marion. Judge Stoneman granted the writ, and the order directed to Constable Oxley of Marion reads as follows:

"You are hereby commanded to have the body of Richard Roe, by you unlawfully detained, as is alleged in the petition before me, John T. Stoneman, judge of the Superior Court, in and for the city of Cedar Rapids, Linn County, Iowa, at the Superior Court in the city of Cedar Rapids, Linn County, Iowa, on this 10th day of

February, 1893, forthwith, to be dealt with according to law, and have you then and there this writ, with the return thereon, with your doings in the premises."

188. Relation of Military to Civil Power.—Sec. 14. The military shall be subordinate to the civil power. No standing army shall be kept up by the State in time of peace; and in time of war, no appropriation for a standing army shall be for a longer time than two years.

Art. IV., Sec. 7., shows how the military is kept subordinate to the civil power.

The last part of the clause is intended to prevent the legislature from supporting a standing army contrary to the will of the people.

189. Forced Hospitality to Soldiers.—Sec. 15. No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war except in the manner prescribed by law.

Students of United States history will recall how, just before the Revolution, the "populous and commercial town of Boston was garrisoned with an army (British), sent not to protect but enslave its inhabitants," and how by that means the "civil government was overturned and a military despotism erected upon its ruins." It was quite customary then to force private families to shelter and feed the soldiers of King George.

190. Treason.—Sec. 16. Treason against the State shall consist only in levying war against it, adhering to its enemies, or giving them aid and comfort. No person shall be convicted of treason, unless on the evidence of two witnesses to the same overt act, or confession in open court.

Notice three points in the definition of treason; also four points in connection with conviction.

191. Injustice and Cruelty to Prisoners.—Sec. 17. Excessive bail shall not be required; excessive fines shall not be imposed, and cruel and unusual punishment shall not be inflicted.

This section prevents unprincipled judges from using extortion and cruelty toward helpless prisoners, a very common practice in olden times. Read the articles on "Prisons and Prison Discipline," in the *International Cyclopædia.*

192. Eminent Domain.—Sec. 18. Private property shall not be taken for public use without just compensation first being made, or secured to be made to the owner thereof, as soon as the damages shall be assessed by a jury, who shall not take into consideration any advantages that may result to said owner on account of the improvement for which it is taken.

The right of eminent domain allows the government to require the sale of private property, *if it is needed for the public good*, not otherwise. This is a fundamental principle in government. The right is frequently exercised in what is called condemning private property to secure a location for a school-house, or to extend a street through a private lot. An appeal may be taken from the decision of the appraising jury to the district court. Explain the last clause of section 18.

193. Imprisonment for Debt.—Sec. 19. No person shall be imprisoned for debt in any civil action, on mesne or final process, unless in case of fraud; and no person shall be imprisoned for a military fine in time of peace.

Until the passage of the later bankrupt laws in England, the prisons of that country were crowded with debtors. A vivid picture of this condition of affairs may be found in the description of the Marshalsea and

other debtors' prisons in Dickens' "Little Dorrit." The colony of Georgia was planned by Oglethorpe as an asylum for insolvent debtors. With regard to the arrest of debtors, most of the States of the Union have followed the example of New York, where imprisonment for debt, except in certain cases, was abolished in 1831. In case of *fraud*, the party would be imprisoned for a *misdemeanor*, and not for debt. Mesne process is the process intervening between the beginning and the end of a suit. Final process is a writ of execution in action at law. (*International Dictionary.*)

194. Right of Assembly and Petition.—Sec. 20. The people have the right freely to assemble together to counsel for the common good; to make known their opinions to their representatives and to petition for a redress of grievances.

The industrial armies under Coxey and Kelly in 1894 were cases of assembly and petition combined, but the men composing some of these armies were guilty of many abuses of their privileges while on the march.

195. Attainder, Ex Post Facto, Etc.—Sec. 21. No bill of attainder, ex post facto law, or law impairing the obligation of contracts, shall ever be passed.

A bill of attainder is a judicial act passed by a legislative body, condemning a man to death or outlawry without a fair trial "for offenses against the state or public peace," *i.e.*, political offenses. In England, bills of attainder were formerly a favorite means of disposing of obnoxious noblemen, and of securing large fortunes to the crown. Such acts were accompanied by (1) the confiscation of property, and (2) the forfeit-

ure of all claims to legal rights and protection. By this "attaint" or "corruption of blood," the children of the condemned were debarred from inheritance of any property through him.

196. Ex Post Facto Laws.—Ex post facto laws are laws making criminal an act which was not criminal when committed, or laying upon an act previously committed a penalty heavier than was required by law when the act was committed. Ex post facto laws are retro-active, but all retro-active laws are not ex post facto, for the ex post facto principle does not apply to civil cases.

197. Impairing Obligation of Contracts.—No law may be passed which releases a party from a contract made before the law was passed. Even the Federal Constitution forbids states to pass such laws; and when the State of Tennessee annulled the charter of the city of Memphis, and gave it a new charter, which declared that the city was not liable for any debts contracted under the old charter, the case was taken into the Federal courts, and the charter declared unconstitutional in so far as it impaired the previous contracts of the city.

198. Rights of Foreigners.—Sec. 22. Foreigners who are or may hereafter become residents of this State shall enjoy the same rights in respect to the possession, enjoyment, and descent of property as native-born citizens.

Does this give foreigners the right of elective franchise (voting)?

199. Slavery.—Sec. 23. There shall be no slavery in this State; nor shall there be involuntary servitude, unless for the punishment of crime.

The citizens of Iowa have never had any sympathy with slavery, though in the early days, previous to the Missouri Compromise, some slaves were owned here (73).

200. Lease of Lands.—Sec. 24. No lease or grant of agricultural lands, reserving any rent, or service of any kind, shall be valid for a longer period than twenty years.

It is a very interesting fact, but one not very generally known, that farm lands may not be leased for a longer period than twenty years. At the end of that time, if desired, the lease may be renewed.

201. Reservation of Rights.—Sec. 25. The enumeration of rights shall not be construed to impair or deny others, retained by the people.

What is the object of this section?

202. Prohibitory Amendment.—(Sec. 26. No person shall manufacture for sale, or sell, or keep for sale, as a beverage, any intoxicating liquors whatever, including ale, wine and beer. The General Assembly shall by law prescribe regulations for the enforcement of the prohibition herein contained, and shall thereby provide suitable penalties for the violation of the provision hereof.)

(The foregoing amendment was adopted at a special election held on June 27, 1882. The Supreme court, April 21, 1883, in the case of Koehler & Lange vs. Hill, reported in 60th Iowa, page 543, held that, owing to certain irregularities, the amendment was not legally submitted to the electors, and did not become a part of the constitution.)

SUGGESTIVE QUESTIONS.

1. How was prohibition of the liquor traffic secured, when the prohibitory amendment proved a failure?

2. What is the Mulct Law? The Manufacturer's Bill?

CHAPTER XVI

ARTICLE II.—RIGHT OF SUFFRAGE

203. Qualification.—Section 1. Every (*white*) male citizen of the United States, of the age of twenty-one years, who shall have been a resident of this state six months next preceding the election, and of the county in which he claims his vote sixty days, shall be entitled to vote at all elections which are now or hereafter may be authorized by law.

(Amended by striking out the word "white" at the general election in 1868.)

Show by outline the qualifications required in a voter in Iowa.

Qualifications for voting in Iowa:

1. Sex.
2. Citizenship.
3. Age.
4. Residence.
   (*a*) In State.
   (*b*) In District.

When it was proposed to pass a law giving women the right to vote, the opponents of the law said it was unconstitutional. Is there anything in this section forbidding the legislature to give women the elective franchise? The General Assembly finally passed a law giving women the privilege of voting on financial questions in city and school elections. Is this law any more in accordance with the terms of the Constitution than the law first proposed?

The statutes of the United States require a residence of five years before a foreigner can, by naturalization,

become a citizen of the United States. Every state is allowed to decide for itself what shall be the qualifications of its electors (voters), and many states allow aliens to vote as soon as they have declared their intention of becoming citizens. See the "World Almanac" for a statement of requirements in a voter in each State in the Union.

204. Privilege from Arrest.—Sec. 2. Electors shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest on the days of election, during their attendance at such elections, going to and returning therefrom.

If it were not for this provision in the Constitution, men might be deprived of the privilege of voting by an arrest on some unimportant or even feigned grievance of a private nature. Notice the nature of the exceptions to this exemption from arrest.

205. Exemption from Military Duty.—Sec. 3. No elector shall be obliged to perform military duty on the day of the election, except in time of war or public danger.

If the militia were required to be in camp on election day, it would work a hardship in connection with their voting privilege; but in time of a riot or other public danger, the militia must be available to protect society.

206. Residence of Soldiers and Marines.—Sec. 4. No person in the military, naval, or marine service of the United States shall be considered a resident of this State by being stationed in any garrison, barrack, or military or naval place or station within this State.

The vote of soldiers in barracks in a small town would be a menace to the wishes of the residents while the soldiers would have no vital interests at stake.

207. Disqualifications for Elective Franchise.—Sec. 5. No idiot, or insane person, or person convicted of any infamous crime shall be entitled to the privilege of an elector.

An idiot is one who has been weak-minded from birth. An imbecile is one who has become weak-minded through disease or accident. An insane person is one whose mind is in any way seriously unbalanced. Such people lack the intelligence necessary for the safe use of the ballot. They would become the tools of politicians. By an infamous crime is meant one punished with imprisonment in the penitentiary. Criminals of this class certainly should not be trusted with the ballot. Provision is made, however, for the restoration of the franchise to such parties through the action of the governor, and this is commonly done in the case of criminals who show promise of permanent reform.

208. Parole of Prisoners.—In this connection it is interesting to know that the law provides for a reduction of the time of imprisonment, in the case of prisoners who show evidence of reform. The law provides a maximum time of imprisonment for each offense, and every prisoner sentenced to the penitentiary is liable to be kept there the full term if he does not behave well. The penitentiary at Anamosa serves as a reformatory for the confinement of first offenders under thirty years of age, who are thus kept entirely separate from the more hardened criminals. A board of parole, consisting of three members appointed by the governor, makes rules and regulations under which it may release prisoners from either penitentiary on parole, for good behavior, and exercise supervision over them while they are absent

from the penitentiary. The time spent on parole does not count as part of the term of imprisonment, in case the prisoner violates the condition of his parole. If the prisoner on parole for more than twelve months shows evidence of reform, the board may recommend that the governor pardon him, and this is usually done. In consequence of such good behavior, or on his own judgment, the governor may restore the franchise to a criminal. (Code § 5706; Laws of 1907.)

209. Elections.—Sec. 6. All elections by the people shall be by ballot.

AMENDMENT.—The general election for State, County and Township officers shall be held on the Tuesday next after the first Monday in November.

(The foregoing amendment was adopted at the general election in 1884.)

By an amendment adopted in 1904 (see Sec. 16 of Schedule, page 279) the general election is held only in even-numbered years.

210. Registration.—All voters in cities of thirty-five hundred inhabitants are required to register before election, giving their names and certain other items of information as stated in the list below. (Code § 1076.)

1. Residence.
2. Name.
3. Age.
4. Nativity.
5. Color.
6. Term of residence in precinct, county, State.
7. Naturalized (?).
8. Date.
9. Court.
10. By act of Congress.
11. Qualified voter.
12. Date of application.
13. Last preceding residence.

Each of these items is a heading for a column in the registration book, so that the same items of informa-

tion are recorded opposite each name registered. As the information is furnished under oath by the party registered, a man has to commit perjury to secure registration before he has been naturalized, or before he has satisfied the legal requirements as to age or residence. Every year new lists of voters are made, and all voters on the previous year's list who failed to vote at the last election must re-register. For the presidential election, every one must re-register. Certain days are advertised on which the registration board will be in session, and neglect to register on these days deprives one of the privilege of voting, unless he can prove that he was out of town on these days.

211. The Ballot.—"When members of Parliament were first elected in England, the choice of the voter was manifested by the voice, by show of the hands, or other public sign. Voting for members of Parliament continued to be by voice till 1872, when the secret ballot was introduced. Voting by ballot was provided for in some of the colonial charters, and in some of the colonies and states it has always prevailed. In other states, especially in the South, the ballot was not used until after the Civil War. Now its use is required by every state but two.[1] The object of the ballot is to secure secrecy, that the voter may be free to express his real choice without fear or intimidation."—Macy's *Our Government, p. 86.*

212. The Australian Ballot.—The ballot was an improvement on *viva voce* voting, but did not secure

[1] The two states alluded to are Kentucky and Oregon. Both now use the ballot.

REPUBLICAN.	DEMOCRATIC.	PROHIBITION.	UNION LABOR.
For Governor,	*For Governor,*	*For Governor,*	*For Governor,*
☐ HIRAM C. WHEELER.	☐ HORACE BOIES.	☐ ISAAC T. GIBSON	☐ A. J. WESTFALL.
For Lieutenant-Governor,	*For Lieutenant-Governor,*	*For Lieutenant-Governor,*	*For Lieutenant-Governor,*
☐ GEO. VAN HOUTEN.	☐ S. L. BESTOW.	☐ J. G. LITTLER.	☐ WILLIAM S. SCOTT.
For Judge of Sup. Court,	*For Judge of Sup. Court,*	*For Judge of Sup. Court,*	*For Judge of Sup. Court,*
☐ S. W. WEAVER.	☐ L. G. KINNE.	☐ DANIEL B. TURNEY.	☐ T. F. WILLIS.

secrecy. Formerly the ballots were printed by private parties, and friends of the candidates would follow the voter to the very ballot-box, urging, coaxing, threatening, and even trying to bribe him to vote their ticket. Under these circumstances it was an easy matter to know how a man voted; and, as a consequence, men very often voted, not as they desired but as their employers, or certain influential persons, wished them to vote. Now some secret form of voting is required in most states. The so-called Australian ballot had its origin in New South Wales, Australia, in 1857. It was adopted in England about 1872,* and since then has been introduced with some modifications in Canada and many of the states of our Union.

213. The Belgian Ballot. — "The Iowa law is based upon a plan used in Belgium, and should properly be called the 'Belgian

* Feilden's Cons. History p. 147.

ballot.' By the former plan, the candidates are classified by offices, while by the latter they are grouped by political parties."—Chandler's *Iowa and the Nation, p. 102.* By the Iowa method of voting, the ballots are printed and sent to the judges of elections by the county auditor, and every ballot must be returned to the auditor with the report of the election. Even the ballots mutilated by mistakes made by voters must be preserved and returned with the rest. Each ballot has the names of all the candidates on it, the candidates of each party being in a separate column. A specimen of the top of a regulation ballot, containing the first three candidates on each party list is shown on p. 199.

214. Method of Voting.—A person desiring to vote presents himself at the table where the judges of election are seated and mentions his name for verification in the registration book (210). The first judge then folds one of the ballots, writes his initials on the back, and gives it to the voter, who carries it to one of the enclosed booths behind the table, and there finds instructions how to mark his ballot. He makes a cross in the square against each candidate for whom he would vote. He then returns to the ballot-box and gives the ballot to the judge, who places it in the box, at the same time announcing the name of the voter to the other judges, who check the name off the registration books, while the clerks of the election record it in the poll books. No electioneering is allowed within one hundred feet of the polls, under heavy penalties, nor is a voter allowed to let his ballot be seen for the purpose of showing how he is about to vote. Voters who de-

clare under oath that they cannot read may be assisted in preparing their ballots by two judges of different parties. Intoxicated persons may vote, but are not entitled to receive assistance in marking their ballots.

215. Election Boards.—Election boards are composed of three judges and two clerks; only two judges and one clerk may belong to the same political party. In municipalities, the members of the council act as judges, and in townships the trustees are *ex-officiis* judges. If more than two councilmen or trustees of the same party reside in the same voting precinct, the county supervisors designate which shall act as judges. The third judge is chosen from another political party which had the next largest number of votes in that precinct at the last general election.

216. Election Returns.—The township clerk sends an abstract of the results of the election, together with the votes strung on a wire (whose ends are then united and sealed), to the county auditor for safe keeping during the six months allowed for contesting the election. In *municipal elections* (149) the council and city clerk perform all the duties incumbent on the county supervisors and auditor in the general elections. The county supervisors, receiving reports of the elections from the townships, make abstracts of the same and report to the executive council (260), directing the report to the secretary of state. The report of the vote for governor and lieutenant-governor is required by the Constitution to be sent to the speaker of the House of Representatives, but it is held by the secretary of state till the General Assembly is organized, and then turned over to the speaker.

THE SELECTION OF CANDIDATES

1. PETITION.—A candidate for any elective office may be nominated by a petition signed by a certain number of voters, as required by law.

2. THE CAUCUS.—In towns and cities under 15,000, local officers may be nominated by party caucuses. A short time before the election, each party holds a caucus, or special meeting of its voters, to agree upon the candidates whom that party will support. At these caucuses any matters of party interest are discussed and committees are appointed for conducting the campaign.

3. THE PRIMARY.—The law now requires that nearly all other party candidates be chosen by ballot at a primary election, which is conducted much like the regular election. The primary elections of all parties are held at one time and place in each precinct and are conducted by one set of officers; but separate ballots are provided for each party, and the voter may vote only his own party ballot. Not only the party candidates for public office, but also the county committeemen and delegates to the county convention of each party are chosen by this method. But whenever the person receiving the most votes as candidate for any county, district, or State office has less than 35 per cent of the total vote of his party for that position, such vote is disregarded, and the nomination is made by the party convention.

4. THE CONVENTION.—The county convention of each party selects the party candidates for county officers in cases where no one has received 35 per cent of the vote in the primaries. It also sends delegates to district and State conventions, which make nominations for district and State officers under like conditions.

In the selection of presidential candidates, the plan is carried one step further, and the State convention selects delegates to the National convention. Sometimes delegates are instructed to vote for certain candidates; sometimes they are left free to use their own judgment.

SUGGESTIVE QUESTIONS.

1. May a woman vote on selection of school directors in Iowa?

2. Are there any states where this privilege is enjoyed by women?

3. In what states do women have full suffrage? (203).

4. In what states are aliens allowed to vote?

5. On what ground must a person reside ten days in a voting precinct before being allowed to vote?

6. Why was the word "white" struck out of Art. II., Sec. 1?

CHAPTER XVII

ARTICLE III.—LEGISLATIVE DEPARTMENT

217. Distribution of Power.—Sec. 1. The powers of the government of Iowa shall be divided into three separate departments, the Legislative, the Executive, and the Judicial; and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any function appertaining to either of the others, except in cases hereinafter expressly directed or permitted.

The Legislature is the law-making power. The Executive is the law-enforcing power. The Judiciary is the law-interpreting power. The General Assembly possesses all legislative authority not delegated to the general (United States) government, or prohibited by the Constitution of the United States or of Iowa. In other words, the General Assembly may do anything not prohibited by the State Constitution or by the Supreme law of the United States (128).

218. Legislative Department.—Sec. 1. The Legislative authority of this State shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives; and the style of every law shall be:

"Be it enacted by the General Assembly of the State of Iowa."

The purpose of two houses is to put a check upon hasty legislature. The clause, "Be it enacted, etc.," is also called the enacting clause of a law, and will be

found at the beginning of every chapter in the laws of any General Assembly.

219. Regular and Special Sessions.—Sec. 2. The sessions of the General Assembly shall be biennial, and shall commence on the second Monday in January next ensuing the election of its members, unless the Governor of the State shall, in the meantime, convene the General Assembly by proclamation.

Notice the difference in the time of the beginning of a regular *session* and the beginning of the *term* (Sec. 3). In extra sessions the assembly is not restricted to the business for which it was called together. (Code p. 91, note on Constitution, Art. IV., Sec. 11.)

220. House of Representatives.—Sec. 3. The members of the House of Representatives shall be chosen every second year by the qualified electors of their respective districts, on the second Tuesday in October, except the years of the Presidential election, when the election shall be on the Tuesday next after the first Monday in November; and their term of office shall commence on the first day of January next after their election, and continue two years, and until their successors are elected and qualified.

(By an amendment adopted by the general election in 1884, elections now occur uniformly in November).

221. Qualifications of Representatives.—Sec. 4. No person shall be a member of the House of Representatives who shall not have attained the age of twenty-one years, be a (*free white*) male citizen of the United States, and shall have been an inhabitant of this State one year next preceding his election, and at the time of his election shall have had an actual residence of sixty days in the county or district he may have been chosen to represent.

(Amended by striking out the words "free white," at the general election in 1880.)

Study these sections by the following outline:

Representatives,
- Number (See Art. III., Sec. 35);
- Election,
  - When,
  - By whom;
- Term of service,
  - Beginning,
  - Length,
    - Regular,
    - Contingent;
- Qualifications,
  - Age,
  - Sex,
  - Citizenship,
  - Residence.

What change has been made in the time of the election? Why, when, and how was the change made? Could the General Assembly have made the change?

222. Senators.—Sec. 5. Senators shall be chosen for the term of four years, at the same time and place as Representatives; they shall be twenty-five years of age, and possess the qualifications of Representatives as to residence and citizenship.

Sec. 6. The number of Senators shall not be less than one-third, nor more than one-half the Representative body; and shall be so classified by lot that one class, being as nearly one-half as possible, shall be elected every two years. When the number of Senators is increased, they shall be annexed by lot to one or the other of the two classes, so as to keep them as nearly equal in numbers as practicable.

Study this section by the following outline:

Senators,
- Number,
  - Relative limits,
  - Absolute limit (Article III., Sec. 34);
- Classes,
  - How many,
  - Changes, how made;

Election,
  When,
  By whom;
Term of service,
  Beginning,
  Length,
    Regular,
    Contingent;
Qualifications,
  Age,
  Sex,
  Citizenship,
  Residence.

What is the purpose in classifying the senators?

223. Powers and Duties Belonging to Both Houses.—Sec. 7. Each house shall choose its own officers, and judge of the qualification, election, and return of its own members. A contested election shall be determined in such manner as shall be directed by law.

Sec. 8. A majority of each house shall constitute a quorum to transact business; but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as each house may provide.

Sec. 9. Each house shall sit upon its own adjournments, keep a journal of its proceedings, and publish the same; determine its rules of proceedings, punish members for disorderly behavior, and, with the consent of two-thirds, expel a member, but not a second time for the same offense, and shall have all other power necessary for a branch of the General Assembly of a free and independent state.

Study these sections by the following analysis, and be able to fill out from memory.

Quorum, Sec. 8.
  For business,
  Two prerogatives of a smaller number;

Authority over membership as to
Admission, Sec. 7,
Three points,
Contested election,
Conduct, Sec. 9,
Removal,
Two conditions,
Rules of order;
Adjournment, Sec. 9,
Temporary,
Restrictions, Sec. 14.
Final,
In case of disagreement, Art., IV., Sec. 13;
Records.

The power to enforce the attendance of absent members through the action of the sergeant-at-arms might at times be necessary to prevent serious delay in legislation. Such absence is sometimes intentional on the part of those opposed to bills before the house, and prevents a quorum.

224. Rights of Individuals. — Sec. 10. Every member of the General Assembly shall have the liberty to dissent from, or protest against, any act or resolution which he may think injurious to the public or an individual, and have the reasons for his dissent entered on the journals; and the yeas and nays of the members of either house, on any question, shall at the desire of any two members present be entered on the journals.

Sec. 11. Senators and Representatives, in all cases, except treason, felony, or breach of the peace, shall be privileged from arrest during the session of the General Assembly, and in going to and returning from the same.

The right to protest, and having that protest recorded, is only justice to members whose constituency might blame them seriously for the passage of some measure unfavorable to that community. The yea and nay vote consists in calling the roll of members

and giving each member the chance to vote "yea" or "nay" on the question. These votes are recorded, also the number of members not voting because of absence. In the Congress of the United States, the demand of one fifth of those present is necessary to call for yea and nay votes. In the legislature of Iowa, all bills, at their final reading, require this kind of vote. This is not necessary in Congress.

Notice the three conditions and three exceptions to the privilege from arrest. Without this privilege, a member of the General Assembly might be required to be present at some case in court involving only private business, and perhaps trumped up simply to deprive the Assembly of his vote.

225. Freedom of Speech.— Members of Congress also have exemption from legal liability for anything said in debate on the floor of the house. This privilege, though not granted by our State constitution, is given by statute. (Code, §11). However, a member may not publish and distribute his speech without being liable for whatever sentiments it may contain. Of course the official publication of a member's speech in the House or Senate Journal does not render him liable. Any impropriety of speech may be punished by the house according to its own rules under Sec. 9 of this Article.

226. Vacancies.—Sec. 12. When vacancies occur in either house, the governor, or the person exercising the functions of governor, shall issue writs of election to fill such vacancies.

Such writs of election are issued to the sheriff, and notice of said election is by him posted in public

places and published in the leading papers. (Code, § 1062). Below is a copy of a governor's proclamation for a general election, and the sheriff's notice of the same election in Black Hawk County :

BY THE GOVERNOR.

A PROCLAMATION

For a General Election, to be Held Tuesday, November 3, 1896.

Pursuant to Law, I, Francis M. Drake, Governor of the State of Iowa, do proclaim that at the General Election to be held on the Tuesday next after the first Monday in November, it being the third day of that month, in the year one thousand eight hundred and ninety-six, the offices hereinafter named are to be filled, to-wit :

By vote of all electors in the State:

The office of Elector of President and Vice-President of the United States, to be filled by the choice of thirteen Electors, each ballot for such office to contain the name of at least one inhabitant of each district into which the State is divided, and to designate against the name of each person voted for the number of the congressional district to which he belongs.

The office of Secretary of State.

The office of Auditor of State.

The office of Treasurer of State.

The office of Attorney-General.

The office of Judge of the Supreme Court, to succeed James H. Rothrock.

The office of Railroad Commissioner.

By vote of the electors in the several Congressional districts :

The office of Representative in Congress from each of said districts.

By vote of the electors of certain Judicial districts the office of Judge of the District Court, as follows:

In the Twelfth Judicial District, to succeed Porter W. Burr.

In the Fourteenth Judicial District, to succeed Lot Thomas.

In the Fifteenth Judicial District, to succeed Nathan W. Macy.

In the Twentieth Judicial District, to succeed Winfield S. Withrow.

And I do further proclaim and give notice that on the day of said general election, certain offices, having become vacant, are to be filled by the electors throughout the State and in the districts named, to-wit:

The office of Railroad Commissioner in the place of John W. Luke, deceased, said office being now temporarily filled by Edward A. Dawson.

The office of Judge of the Fifth Judicial District, in the place of John H. Henderson, resigned, the office being now temporarily filled by John A. Storey.

The office of Judge of the Seventeeth Judicial District, under the provisions of chapter one hundred and twenty-two, of the acts of the Twenty-sixth General Assembly, said office being now filled by Obed Caswell.

The office of Judge of the Eighteenth Judicial District, in the place of William P. Wolf, deceased.

WHEREOF, all electors throughout the State will take due notice, and the Sheriffs of the several counties will take official notice, and be governed accordingly.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Iowa.

Done at Des Moines, this twenty-eighth day of September, in the year of our Lord one thousand eight hundred and ninety-six, of the Independence of the United States the one hundred and twenty-first, and of the State of Iowa the fiftieth.

By the Governor:

[SEAL] F. M. DRAKE.
W. M. MCFARLAND,
Secretary of State.

STATE OF IOWA, Black Hawk County:

Pursuant to Law, I, W. M. Law, Sheriff of Black Hawk county, Iowa, do hereby proclaim that at the general election to be held on the Tuesday next after

the first Monday in November, it being the third day of that month, in the year one thousand eight hundred and ninety-six, the offices hereinafter named are to be filled by vote of all the electors of the county, to-wit:

The office of Clerk of the District Court.
The office of Recorder of Deeds.
The office of County Auditor.
The office of County Attorney.
The office of Supervisor—1st Supervisor district.
The office of Supervisor—2d Supervisor district.
The office of Supervisor—3d Supervisor district (to fill vacancy).
The office of Supervisor—6th Supervisor district.

WHEREOF, all the electors of the county will take due notice, and govern themselves accordingly.

Witness my hand this 16th day of October, A. D. 1896.

W. M. LAW,
Sheriff of Black Hawk County, Iowa.

227. Publicity of Sessions.—Sec. 13. The doors of each house shall be open, except on such occasions as, in the opinion of the house, may require secrecy.

228. Adjournment.—Sec. 14. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

229. Bills—Their Origin.—Sec. 15. Bills may originate in either house, and may be amended, altered, or rejected by the other; and every bill having passed both houses shall be signed by the speaker and president of their respective houses.

Two of the States, North Carolina and Rhode Island, do not require bills to be signed by the governor. Many other States, among which is New York, go to the other extreme and allow the governor to veto portions of financial (appropriation) bills while approving other portions. (See Hinsdale's "American Government," § 683.) Very unwise measures are sometimes

carried through a legislature because they are attached to a good bill. Such measures are called "riders."

230. Their Passage.—Sec. 16. Every bill which shall have passed the General Assembly shall, before it becomes a law, be presented to the governor. If he approve, he shall sign it; but if not, he shall return it, with his objections, to the house in which it originated, which shall enter the same upon their journal, and proceed to reconsider it; if, after such reconsideration, it again pass both houses, by yeas and nays, by a majority of two-thirds of the members of each house, it shall become a law, notwithstanding the governor's objections. If any bill shall not be returned within three days after it shall have been presented to him, Sunday excepted, the same shall be a law in like manner as if he had signed it, unless the General Assembly, by adjournment, prevent such return. Any bill submitted to the governor for his approval during the last three days of a session of the General Assembly shall be deposited by him in the office of the secretary of State, within thirty days after the adjournment, with his approval, if approved by him, and with his objections, if he disapproves thereof.

Sec. 17. No bill shall be passed unless by the assent of a majority of all the members elected to each branch of the General Assembly, and the question upon the final passage shall be taken immediately upon its last reading, and the yeas and nays entered upon the journal.

There are three ways in which a bill may become a law. Study the sections above, and then describe each of these three ways. Notice that, by section 17, a bill requires an absolute majority of each house; that is, a majority of all the members elected, not simply a majority of those present. Every bill, before it passes each house, must have three separate readings, the second and third of which must be on different days. Immediately after the third reading, the bill is voted upon by a yea and nay vote, which is formally entered

upon the journal of the house. In each house, there are various committees appointed for the consideration of the different kinds of bills. These committees are appointed by the speaker of the house and by the lieutenant-governor who acts as president of the senate.

231. How Bills Fail to Become Laws.—When a bill is proposed by a member, it is referred to the proper committee, which may report to the house, favoring its passage, amend it in some particulars and then recommend its passage, or reject it entirely. In the last case, the bill is said to be killed in the committee, and this is the *first* way in which a bill may fail to become a law. If the bill is returned by the committee with a favorable report, it may fail to secure enough votes in the house, and so be killed in the house where it originated. This is the *second* way in which a bill may fail to become a law. If the bill passes by a majority vote in the first house, it may be rejected in the second house. This is the *third* way of failing to become a law. Having passed both houses, it may be vetoed by the governor, and fail to secure a two-thirds vote in one or both of the houses, and so not be passed over his veto. If a bill passes both houses and is presented to the governor for consideration less than three days before adjournment, he need not return it until after the General Assembly has closed its session. He is then required to file it with his signature or veto in the office of the secretary of State within thirty days; but if he vetoes it, the General Assembly, having adjourned, cannot pass it over his veto, and so the bill fails to become a law.

This last is similar to the *pocket veto* of the President of the United States.

232. Report of Finances.—Sec. 18. An accurate statement of the receipts and expenditures of the public money shall be attached to and published with the laws at every regular session of the General Assembly.

This is a requirement evidently fitting and proper, and the statement is drawn from the books of the State auditor and treasurer.

QUESTIONS AND TOPICS.

1. Look up the history of special sessions of the General Assembly in Iowa (50).

2. From what does the *pocket veto* derive its name? See *Johnston's American Politics*, p. 115.

3. Have any of the States ever had legislatures consisting of one house? *Fiske's Civil Government*, p. 155.

4. Was a uni-cameral Congress considered by the Constitutional Convention of 1787? Hinsdale's *American Government*, § 186.

5. May any kind of bill originate in either house of Congress?

6. How are committees selected in the General Assembly? See Rules of the Twenty-sixth General Assembly of Iowa, pp. 3 and 27.

CHAPTER XVIII

LEGISLATIVE DEPARTMENT—(*Continued*)

233. Impeachment. — Sec. 19. The House of Representatives shall have the sole power of impeachment, and all impeachments shall be tried by the Senate. When sitting for that purpose, the senators shall be upon oath or affirmation; and no person shall be convicted without the concurrence of two-thirds of the members present.

The plan of impeachment is similar to the same process in the government of the United States. The impeachment or indictment is by the lower house and the trial by the upper house. Notice that the number of votes necessary to conviction is two-thirds of those present.

234. Parties Liable — Punishment. — Sec. 20. The Governor, Judges of the Supreme and District Courts, and other State officers, shall be liable to impeachment for any misdemeanor or malfeasance in office; but judgment in such cases shall extend only to removal from office, and disqualification to hold any office of honor, trust, or profit under this State; but the party convicted or acquitted shall nevertheless be liable to indictment, trial, and punishment, according to law. All other civil officers shall be tried for misdemeanors and malfeasance in office in such manner as the General Assembly may provide.

Notice carefully what officers may be impeached; also the limits set upon the punishment which the Senate may inflict. The fact that the party impeached may afterwards be tried by the regular courts of the State seems to conflict with the article in the bill of

rights (Art. I., Sec. 12), but really the party is impeached and tried for conduct unworthy of a public official, while in the courts he is tried for a crime against the laws of the State. Touching the misdemeanors of county and local officers, the General Assembly has passed various laws providing for the punishment of such offenses.

235. Accepting Appointments. — Sec. 21. No senator or representative shall, during the time for which he shall have been elected, be appointed to any civil office of profit under this State which shall have been created, or the emoluments of which shall have been increased during such term, except such offices as may be filled by elections by the people.

If, during the first month of a new senator's term, a bill is passed providing for the appointment by the governor of an inspector of State institutions with a large salary, the senator may not resign his position to accept the appointment until after the four years of his senatorial term have passed. If the salary of the president of the State University were increased during his term, could the senator resign and accept that position?

236. Disqualification.—Sec. 22. No person holding any lucrative office under the United States, or this State, or any other power, shall be eligible to hold a seat in the General Assembly; but offices in the militia, to which there is attached no annual salary, or the office of justice of the peace, or postmaster whose compensation does not exceed one hundred dollars per annum, or notary public, shall not be deemed lucrative.

If the salary of the superintendent of public instruction were increased by the General Assembly, could any member of the assembly become State superintendent without resigning his place in the

legislature? Could he resign and become State superintendent before his term as senator had expired? If the postmaster at Des Moines desires to become a member of the General Assembly, what must he do before he can take his seat in that body?

237. Holders of Public Money.—Sec. 23. No person who may hereafter be a collector or holder of public moneys shall have a seat in either house of the General Assembly, or be eligible to hold any office of trust or profit in this State, until he shall have accounted for and paid into the treasury all sums for which he may be liable.

If the treasurer of Black Hawk county is elected as representative for that county in the General Assembly, what three things must he do before he can take his seat in that body? Why is this requirement wise?

238. Payment of Public Money.—Sec. 24. No money shall be drawn from the treasury but in consequence of appropriations made by law.

It is also necessary to have a warrant, signed by the auditor of State, authorizing the payment of money by the State treasurer.

239. Compensation of Members.—Sec. 25. Each member of the first General Assembly under this Constitution shall receive three dollars per diem while in session; and the further sum of three dollars for every twenty miles traveled, in going to and returning from the place where such session is held, by the nearest traveled route, after which they shall receive such compensation as shall be fixed by law; but no General Assembly shall have the power to increase the compensation of its members. And when convened in extra session they shall receive the same mileage and per diem compensation as fixed by law for the regular session, and none other.

Notice the two methods of paying members. The

present pay of members of the General Assembly is $550 for the regular session, and five cents for every mile traveled going to and from the place of meeting. Half this sum and all the mileage is payable at the close of the first thirty days, and the rest at the close of the session. The pay for an extra session is mileage and a rate per diem equal to the amount of their salary per day during the last regular session, provided that it is not over six dollars. (Code, § 12.) Notice that, although the General Assembly fixes by law the compensation of representatives and senators, no assembly has the power to increase the pay of its own members. This is not true of the United States Congress, and at one time (March 3, 1873) Congress raised the salaries of its members from $5,000 to $7,500, and dated the change back two years. This was the famous "Salary Grab," which raised such a storm of indignation throughout the country that the act was soon after repealed. Public opinion prevents any great excesses in this line of legislation.

240. When Laws Go Into Effect.—Sec. 26. No law of the General Assembly, passed at a regular session, of a public nature, shall take effect until the fourth day of July next after the passage thereof. Laws passed at a special session shall take effect ninety days after the adjournment of the General Assembly by which they were passed. If the General Assembly shall deem any law of immediate importance, they may provide that the same shall take effect by publication in newspapers in the State.

241. Prohibition.—Sec. 27. No divorce shall be granted by the General Assembly.

Sec. 28. No lottery shall be authorized by this State; nor shall the sale of lottery tickets be allowed.

A divorce is granted by the courts of the State if, after investigation, there seems to be just cause for the divorce. Lotteries have been proven such insidious foes to the moral and financial good of the people that every State in the Union now opposes them, and the United States has made it a criminal offense to use the mails to advertise lotteries or sell lottery tickets. The long struggle on the part of the Louisiana Lottery to induce the legislature of that State to authorize its continuance finally failed, and the lottery was finally driven from its last stronghold in the United States.

242. Subject Matter.—Sec. 29. Every act shall embrace but one subject, and matters properly connected therewith; which subject shall be expressed in the title. But if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be expressed in the title.

This requirement aims at clearness and definiteness in laws, and prevents any legal requirement from being obscured by being inserted in the clauses of another law.

243. Local and Special Laws.—Sec. 30. The General Assembly shall not pass local or special laws in the following cases:

For the assessment and collection of taxes for State, county, or road purposes.

For laying out, opening, and working roads or highways.

For changing the names of persons,

For the incorporation of cities and towns.

For vacating roads, town plats, streets, alleys, or public squares.

For locating or changing county seats.

In all the cases above enumerated, and in all other

cases where a general law can be made applicable, all laws shall be general and of uniform operation throughout the State; and no law changing the boundary lines of any county shall have effect until upon being submitted to the people of the counties affected by the change, at the general election, it shall be approved by a majority of the votes in each county, cast for and against it.

Consider each of the cases mentioned above, and notice how unwise it would be to take such matters out of the hands of the local authorities. Instead of making special laws for every local requirement under the above heads, the General Assembly passes general laws giving authority, with certain restrictions, to certain local officials, as supervisors, township trustees, or, in the changing of county seats, to the popular vote. Instead of giving special charters, prescribing the form of government of every city and town separately, general laws are passed, providing a form of government in cities of a certain class, as determined by population (146).

244. Extra Compensation, Private Appropriations.—Sec. 31. No extra compensation shall be made to any officer, public agent, or contractor, after the service shall have been rendered, or the contract entered into; nor shall any money be paid on any claim, the subject matter of which shall not have been provided for by pre-existing laws, and no public money or property shall be appropriated for local, or private purposes, unless such appropriation, compensation, or claim be allowed by two-thirds of the members elected to each branch of the General Assembly.

The necessity of the first clause of this section lies in the fact that extra compensation is sometimes secured in very corrupt ways by officials or contractors in no manner entitled to it. A member of a city council

who had been appointed overseer of certain work being done for the city, presented his bill for services rendered. The council declined to allow the bill, as his services had been performed as part of official duties. This is an illustration of the same principle that is mentioned in the above section, occurring in a local instead of a State legislative body. The second clause in the section is an application of Art. III., Sec. 24.

The meaning of the last clause is illustrated by the following incident in Iowa history: In Governor Sherman's last term, Auditor Brown declined to make certain reports required of him, and was removed by Governor Sherman. The investigation of the case was long and expensive, and after Mr. Brown's reinstatement by the next governor he brought claims against the State for his expenses in the contest. After a number of unsuccessful attempts, a bill was carried through the Twenty-sixth General Assembly by a two-thirds vote, granting the claims made by Mr. Brown. As there are several interesting and instructive features in the bill, we give it entire, as follows:

LAWS OF THE TWENTY-SIXTH GENERAL ASSEMBLY.

Chapter 164.

An act to reimburse John L. Brown, as auditor of State during the years 1885 and 1886, for money expended in defense of his said office and of his official rights and duties.

Be it enacted by the General Assembly of the State of Iowa, Section 1. That for the purpose of reimbursing John L. Brown for money expended by him for attorney's services necessary in defending his office

and his official rights as auditor of the State of Iowa during the years 1885 and 1886, and for interest thereon since paid by him, there is hereby appropriated, out of any moneys in the State treasury not otherwise appropriated, the sum of four thousand dollars, the money hereby appropriated to be paid to John L. Brown; and the auditor of State is hereby authorized and directed to draw his warrant on the State treasurer in favor of John L. Brown for said sum.

Sec. 2. That the acceptance by John L. Brown of the sum appropriated herein shall be taken as full settlement of all claims by said John L. Brown as against the State of Iowa, growing out of the matters recited in this act.

Sec. 3. This act, being deemed of immediate importance, shall take effect and be in force from and after the date of its publication in the Iowa *State Register* and Des Moines *Leader*, newspapers published in Des Moines, Iowa.

Approved April 14, 1896.

I hereby certify that the foregoing act was published in the Iowa *State Register*, April 24, and Des Moines *Leader*, April 25, 1896.

W. M. McFARLAND, *Secretary of State.*

In this bill notice (1) the style (Art. III., Sec. 1), (2) the purpose and the amount of the appropriation (3), the proviso insuring against any further claims on this ground, and (4) the time when the act takes effect. When would the act have taken effect if the third section had not been included in the act? (See Art III., Sec. 26).

245. The Oath of Office.—Sec. 32. Members of the General Assembly shall, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear, or affirm (as the case may be), that I will support the Constitution of the United States, and the Constitution of the State of Iowa, and that I will faithfully discharge the duties of Senator (or representative, as the case may be) according to the best of my ability." And the members of the General Assembly are hereby empowered to administer to each other the said oath or affirmation.

Notice that one is given the choice between swearing and affirming. This is a concession to those who have conscientious scruples against swearing. This oath of allegiance to both United States and Iowa is required by the Federal Constitution. Any one who violates this oath by engaging in insurrection against the United States, or giving its enemies aid and comfort, is disqualified for holding any civil or military office under the United States or any State, or for becoming a member of Congress. This disqualification can be removed only by a two-thirds vote of Congress. (Constitution of the United States, Amendment XIV., Sec. 3).

246. The State Census.—Sec. 33. The General Assembly shall, in the years one thousand eight hundred and fifty-nine, one thousand eight hundred and sixty-three, one thousand eight hundred and sixty-five, one thousand eight hundred and sixty-seven, one thousand eight hundred and sixty-nine, and one thousand eight hundred and seventy-five, and every ten years thereafter, cause an enumeration to be made of all the (*white*) inhabitants of the State.

(Amended by striking out the word "white" at the general election in 1868).

This enumeration is called the State census, and is

taken by the township assessors, reported to the county auditor, and by him reported to the secretary of State. The preparation of blanks and the general supervision of the census is in the hands of the executive council of the State, comprising the governor, secretary of State, auditor, and treasurer. (Laws of 1904, Ch. 8.) Until 1875 the census was taken more frequently, about once in two years. The United States census is taken once in ten years, but it comes in the years whose numerals end with zero. In connection with the census, many items of interest are usually reported, *e.g.*, foreigners not naturalized, number of militia, children between five and twenty-one years of age, quantity and value of agricultural products, etc.

247. Number and Apportionment of Senators.—(AMENDMENT.) Sec. 34. The Senate shall be composed of fifty members to be elected from the several senatorial districts, established by law, and at the next session of the General Assembly held following the taking of the State and national census, they shall be apportioned among the several counties or districts of the State, according to population as shown by the last preceding census.

248. Number of Representatives.—(AMENDMENT.) Sec. 35. The House of Representatives shall consist of not more than one hundred and eight members. The ratio of representation shall be determined by dividing the whole number of the population of the State as shown by the last preceding State or national census, by the whole number of counties then existing or organized, but each county shall constitute one representative district and be entitled to one representative, but each county having a population in excess of the ratio number, as herein provided, of three-fifths or more of such ratio number shall be entitled to one additional

representative, but said addition shall extend only to the nine counties having the greatest population.

249. Apportionment of Representatives.— (AMENDMENT.) Sec. 36. The General Assembly shall, at the first regular session held following the adoption of this amendment, and at each succeeding regular session held next after the taking of such census, fix the ratio of representation, and apportion the additional representatives, as hereinbefore required.

(Secs. 34, 35, 36, as printed above, constitute an amendment adopted at the general election in 1904. The former sections which these replaced are printed below, in small type, for reference. A similar amendment was proposed six years earlier, but at the general election in 1898 it was rejected.)

The apportionment of 1906 (Laws of Thirty-First General Assembly, Chapter 211) gave two representatives each to Lee, Des Moines, Pottawatamie, Polk, Scott, Clinton, Linn, Woodbury, and Dubuque counties, and one each to the other ninety counties of the State, making the total number one hundred and eight, the largest possible under Sec. 35. Under what conditions might the number be less than one hundred and eight?

The number of counties in each senatorial district varies from one to five.

Sections 34, 35, 36, which were repealed in 1904, read as follows:—

Sec. 34. The number of senators shall at the next session following each period of making such enumeration, and the next session following each United States census, be fixed by law, and apportioned among the several counties according to the number of (*white*) inhabitants in each.

(Amended by striking out the word "white" at the general election in 1868.)

Sec. 35. The senate shall not consist of more than fifty members, nor the house of representatives of more than one hundred; and they shall be apportioned among the several counties and representative districts of the State according to the number of (*white*)

inhabitants in each, upon ratios to be fixed by law; but no representative district shall contain more than four organized counties, and each district shall be entitled to at least one representative. Every county and district which shall have a number of inhabitants equal to one-half of the ratio fixed by law, shall be entitled to one representative; and any one county containing in addition to the ratio fixed by law one-half of that number, or more, shall be entitled to one additional representative. No floating district shall hereafter be formed.

(Amended by striking out the word "white" at the general election in 1868.)

Sec. 36. At its first session under this constitution, and at every subsequent regular session, the General Assembly shall fix the ratio of representation, and also form into representative districts those counties which will not be entitled singly to a representative.

250. Floating Districts.—The meaning of the term "floating districts" is best illustrated by a citation from the political history of Iowa. In one of the acts of the legislature which provided for representative and senatorial districts, it was declared that the county of Van Buren should constitute one representative district, with two representatives; Henry county another district, with two representatives; and Lee a third district, with three representatives, and then the same act provided that these three counties, Van Buren, Henry, and Lee, should jointly constitute a representative district and have one representative. This last district was what was then called "a floating district," although, as Prof. T. S. Parvin remarks, the district was fixed enough, and it was the representative who was a "floating member." This representative was chosen sometimes from one county and sometimes from another.

251. Contiguous Territory.—Sec. 37. When a congressional, senatorial, or representative district shall be composed of two or more counties, it shall not be entirely separated by any county belonging to another

district; and no county shall be divided in forming a congressional, senatorial, or representative district.

252. Mode of Voting in Elections in the General Assembly.—Sec. 38. In all elections by the General Assembly, the members thereof shall vote *viva voce*, and the votes shall be entered on the journal.

The General Assembly elects its own officers and United States senators. If there is a tie in the election of governor and lieutenant governor, the General Assembly in joint session elects these officers. (Art. IV., Sec. 4.)

TOPIC FOR READING.

Auditor Brown (244) was impeached by the House, tried by the Senate, and acquitted. A description of the trial may be found in the Journals of the Assembly.

CHAPTER XIX

ARTICLE IV.—EXECUTIVE DEPARTMENT

253. The Governor—Election, Term, Canvass of Vote.—Section 1. The supreme executive power of the State shall be vested in a chief magistrate, who shall be styled the Governor of the State of Iowa.

Sec. 2. The governor shall be elected by the qualified electors at the time and place of voting for members of the General Assembly, and shall hold his office two years from the time of his installation, and until his successor is elected and qualified.

Sec. 3. There shall be a lieutenant-governor, who shall hold his office two years, and be elected at the same time as the governor. In voting for governor and lieutenant-governor, the electors shall designate for whom they vote as governor, and for whom as lieutenant-governor. The returns of every election for governor and lieutenant-governor shall be sealed up and transmitted to the seat of government of the State, directed to the speaker of the House of Representatives, who shall open and publish them in the presence of both houses of the General Assembly.

As the General Assembly is not in session when the results of the election are canvassed, the returns on the election of governor and lieutenant-governor are forwarded to the executive council, with the returns for other State officers, and retained by the secretary of State till the assembly meets and elects a speaker, when they are turned over to him.

254. Vote Required to Elect.—Sec. 4. The persons respectively having the highest number of votes for governor and lieutenant-governor shall be declared duly elected; but in case two or more persons shall

have an equal and the highest number of votes for either office, the General Assembly shall, by joint vote, forthwith proceed to elect one of the said persons governor, or lieutenant-governor, as the case may be.

A majority of all electoral votes is necessary to elect a president; a plurality vote by the people will elect the governor. A plurality vote means the largest number given to any one candidate. A majority of votes is more than half of all the votes cast. When a person has a majority of votes, he has more than all the other candidates together.

255. Contested Elections and Eligibility.—Sec. 5. Contested elections for governor, or lieutenant-governor, shall be determined by the General Assembly in such manner as may be prescribed by law. Code § 1239.

Sec. 6. No person shall be eligible to the office of governor or lieutenant-governor who shall not have been a citizen of the United States, and a resident of the State, two years next preceding the election, and attained the age of thirty years at the time of said election.

256. Command of Militia.—Sec. 7. The governor shall be commander-in-chief of the militia, the army, and navy of this State.

When Kelley's army was passing through Iowa on its way to Washington, Governor Jackson called out a portion of the organized militia and kept them near the scene of excitement to be ready for an emergency. The governor has frequently called out the militia in cases of violent strikes among the coal miners.

257. Duties of Governor.—Sec. 8. He shall transact all executive business with the officers of government, civil and military, and may require information in writing from the officers of the executive department upon any subject relating to the duties of their respective offices.

Sec. 9. He shall take care that the laws are faithfully executed.

Sec. 10. When any office shall, from any cause, become vacant, and no mode is provided by the Constitution and laws for filling such vacancy, the governor shall have power to fill such vacancy by granting a commission, which shall expire at the end of the next session of the General Assembly, or at the next election by the people.

This does not apply to members of the General Assembly. They are not officers in the constitutional use of the word. In 1894 Governor Boies filled a vacancy on the board of directors of the Iowa State Normal School caused by the resignation of one of its members.

Sec. 11. He may, on extraordinary occasions, convene the General Assembly, by proclamation, and shall state to both houses, when assembled, the purpose for which they shall have been convened.

An extra session of the General Assembly was called for the winter 1896–1897 to act on the revision of the State Code. At such extra sessions, the business of the assembly is *not* confined to the purpose for which they are called together. For an account of extra sessions read notes on §§ 24 and 50.

Sec. 12. He shall communicate, by message, to the General Assembly, at every regular session, the condition of the State, and recommend such matters as he shall deem expedient.

Sec. 13. In case of disagreement between the two houses with respect to the time of adjournment, the governor shall have power to adjourn the General Assembly to such time as he may think proper; but no such adjournment shall be beyond the time fixed for the regular meeting of the next General Assembly.

Sec. 14. No person shall, while holding any office under the authority of the United States, or this State,

execute the office of governor, or lieutenant-governor, except as hereinafter expressly provided.

Sec. 15. The official term of the governor, and lieutenant governor, shall commence on the second Monday of January next after their election, and continue for two years, and until their successors are elected and qualified. The lieutenant-governor, while acting as governor, shall receive the same pay as provided for governor; and while presiding in the Senate, shall receive as compensation therefor the same mileage and double the per diem pay provided for a senator, and none other.

Sec. 16. The governor shall have power to grant reprieves, commutations, and pardons, after conviction, for all offenses except treason and cases of impeachment, subject to such regulations as may be provided by law. Upon conviction for treason, he shall have power to suspend the execution of the sentence until the case shall be reported to the General Assembly at its next meeting, when the General Assembly shall either grant a pardon, commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall have power to remit fines and forfeitures, under such regulations as may be prescribed by law; and shall report to the General Assembly, at its next meeting, each case of reprieve, commutation or pardon granted, and the reason therefor; and also all persons in whose favor remission of fines and forfeitures shall have been made, and the several amounts remitted.

Reprieves postpone punishment. Commutations lighten punishment. Pardons remove punishment. Notice that the pardoning power of the governor does not extend to cases of impeachment or treason. The President's pardoning power is restricted only in respect to cases of impeachment. By statute (Code, § 5626), the governor is required to consult the assembly before pardoning a case of murder in the first degree.

258. Succession of the Executive, Etc.—Sec. 17. In case of the death, impeachment, resignation, removal from office, or other disability of the governor, the powers and duties of the office for the residue of the term, or until he shall be acquitted, or the disability removed, shall devolve on the lieutenant-governor.

Sec. 18. The lieutenant-governor shall be the president of the Senate, but shall only vote when the Senate is equally divided; and in case of his absence or impeachment, or when he shall exercise the office of governor, the Senate shall chose a president pro tempore.

Sec. 19. If the lieutenant-governor, while acting as governor, shall be impeached, displaced, resign or die, or otherwise become incapable of performing the duties of the office, the president pro tempore of the Senate shall act as governor until the vacancy is filled, or the disability removed; and if the president of the Senate, for any of the above causes, shall be rendered incapable of performing the duties pertaining to the office of governor, the same shall devolve upon the Speaker of the House of Representatives.

Notice that the succession to the governor's office is similar to the old succession to the presidency.

259. The Great Seal.—Sec. 20. There shall be a seal (61) of this State, which shall be kept by the Governor and used by him officially, and shall be called the Great Seal of the State of Iowa.

Sec. 21. All grants and commissions shall be in the name and by the authority of the people of the State of Iowa, sealed with the Great Seal of the State, signed by the governor and countersigned by the secretary of State.

260. Executive Council.—Sec. 22. A secretary of State, auditor of State, and treasurer of State shall be elected by the qualified electors, who shall continue in office two years, and until their successors are elected and qualified, and perform such duties as may be required by law.

The governor, secretary of State, treasurer, and

auditor constitute the *Executive Council.* Any three of this council constitute a quorum. Each draws a salary of $800 a year in addition to his regular salary. The council chooses a secretary who holds office during its pleasure. Some of the duties of the executive council are:

(1) To act as a board of equalization of taxes between counties, so that all counties may bear a fair share of the State expenses.

(2) To assess the property of railroad, telegraph, telephone, and express companies in the State.

(3) To act as a board for canvassing election returns from counties.

(4) To act as a business board having charge of the State Capitol, and providing for the stationery and supplies for the State offices. In this capacity they have charge of an emergency fund, which they may use at their discretion to meet unforeseen expenses.

(5) To have charge of the State census.

261. The Secretary of State.—This officer has charge of the great papers of the State, including all the acts of the territorial legislature, the several constitutions of the State, and all the laws and resolutions passed by the successive State legislatures. All the governor's proclamations and commissions of State officers are countersigned by him, and recorded in a book provided for that purpose. Articles of incorporation of both domestic and foreign corporations are recorded by him, and he issues certificates of authority to do business in Iowa. He receives reports from county clerks concerning the criminal cases in the various district courts, and makes an abstract of the same to the governor just before each

regular session of the General Assembly. These abstracts are useful to the governor in connection with his message to the assembly. (Art. IV., Sec. 12). It is the duty also of the secretary of State to receive and preserve all papers sent to him relating to the incorporation of cities and towns.

262. The Auditor of State.—He is the general accountant of the State, and his books must show all the receipts and expenses, all the debts and credits of the State. He settles with county treasurers and all persons who receive State revenues of any kind, and all who owe money to the State treasury. On the other hand, he settles claims against the State, and gives a warrant over his own signature authorizing the payment of each claim by the State treasurer. If he finds a claim to be just and right, but not provided for by any appropriation, he gives the claimant a certificate that his claim is legal, and this is the basis for an appropriation by the next assembly. He is the general business manager of State affairs, and has charge of all books, papers, mortgages, leases, bonds, etc., connected with the money affairs of the State not required to be kept in some other office. On the first Monday in March and September, he apportions the interest of the permanent school fund of the State among the several counties in proportion to the number of persons between five and twenty-one years of age, in each county.

263. The Treasurer of State.—This officer has charge of the State funds. With the advice and approval of the executive council, he designates one or more banks in the city of Des Moines as a depository of

all receipts of the State, and these banks give bonds for the faithful care of the funds and for the payment of all drafts made by the treasurer. The treasurer makes two receipts for all payments made to the treasury, one of which goes to the party making the payment, and the other to the auditor as a basis for entries in the auditor's report of receipts and expenditures. He pays no money out of the treasury except on the order or warrant of the auditor as stated above. Like all other State officers, he makes an annual report to the governor.

264. The Attorney-General.—This officer is the legal adviser of the State officers, and acts as prosecuting attorney for the State in all criminal and civil actions in which the State is a party, and his services are required by the governor, executive council, or General Assembly. He acts for the State in all cases in the Supreme Court.

During the first few years of the State government, there was no regular officer that represented the State of Iowa in cases before the supreme and United States courts, an attorney being employed from time to time as the necessities required. However, January 9, 1853, the General Assembly passed a law that provided for the election of such an officer by the vote of the people, and when the constitution of 1857 was drafted, this officer was duly recognized as a State officer, whose term of office was to last for two years. (Art. V., § 12.) His duties were subject to the laws that might be enacted by the General Assembly.

265. Railroad Commissioners.—The railroad commissioners are three in number and are elected by the people for terms of four years each. One or two commissioners are elected at each general election. This board has the supervision of the steam railroads of the State, and insures the proper service of the public in

regard to safety of bridges, number of trains, stations; regulation of passenger and freight rates, and various other matters of importance. It makes an annual report to the governor. In accordance with a law passed by the Twenty-sixth General Assembly, the railroad commissioners have also the supervision of express companies in the State.

266. The Superintendent of Public Instruction. — This officer is elected by the people of the State once in two years. He is allowed a deputy and such other clerical help as the General Assembly sees fit to provide. He has general supervision of the schools of the State. Many circulars of suggestion and information are prepared by him and sent to the teachers of the State. He holds conventions of the county superintendents for the discussion of educational questions, and in many ways aids and encourages the teachers of the State. Cases of appeal from the county superintendents are decided by the State superintendent, and he gives official opinions on questions of school law to county superintendents, school boards, and other officials.

By virtue of his office he is president of the board of trustees of the State Normal School, and of the educational board of examiners, and a member of the board of regents of the State University. He makes a report of the condition of the schools of the State every two years, and every four years publishes the school laws of the State with notes and pertinent quotations from important decisions on school questions. During the session of the General Assembly he gives advice on educational matters and urges suitable legis-

lation on questions touching the State Schools and the common schools of Iowa.

STATE OFFICERS ELECTED BY THE PEOPLE.

Officer.	Term.	Salary.	When Elected.
Governor	2 years	$5000*	General Election.
Secretary of State	"	$2200*	"
Treasurer	"	$2200*	"
Auditor	"	$2200*	"
Lieutenant-Governor	"	$1100 session	"
Attorney-General	"	$4000	"
Supt. Pub. Instruction	"	$2200	"
3 Railroad Commissioners	4 years	$2200	"
Supreme Court Reporter	"	....	"
Clerk of Supreme Court	"	$2200	"

Most Prominent Iowa Officers

1. Governors of Iowa:

(1). Territory of Iowa, 1838–1846.

Robert Lucas . . . . . 1838–1841.
John Chambers . . . . . 1841–1845.
James Clark . . . . . 1845–1846.

(2). State of Iowa. Length of term, four years.

(a) First constitution, 1846–1857:

Ansel Briggs . . . . . 1846 to 1850.
Stephen Hempstead . . . . . 1850 to 1854.
James W. Grimes . . . . . 1854 to 1858.

(b) Second constitution, 1857. Length of term, two years.

Ralph P. Lowe . . . . . 1858 to 1860.
Samuel J. Kirkwood . . . . . 1860 to 1864.
Wm. M. Stone . . . . . 1864 to 1868.
Samuel Merrill . . . . . 1868 to 1872.
Cyrus C. Carpenter . . . . . 1872 to 1876.
Samuel J. Kirkwood . . . . . Jan. 13 to Feb. 1, 1877.
†Joshua G. Newbold . . . . . Feb. 1, 1877 to Jan. 17, 1878.
John H. Gear . . . . . 1878 to 1882.

* Besides $800 as member of Executive Council.

†Became governor upon the resignation of Governor Kirkwood.

SUBORDINATE STATE OFFICERS SELECTED BY APPOINTMENT.

Officers.	No.	How Appointed.	With Consent of	Term.	Salary.	Leading Duties.
Mine Inspectors	3	By Governor.	On Examination.	2 yrs.	$1,500.	Enforce Laws Protecting Mines.
Food and Dairy Commissioner	....	"	.....	"	$2,000.	" " Touching Dairy Products and Pure Food Laws.
Commissioner of Labor Statistics	....	"	Exec. Council	"	$1,800.	Collects Information on Industrial Questions. Enforces Labor Laws.
Inspectors of Petroleum Products	14	"	.....	"	Fees.	Enforce Laws for Purity of Oils.
State Librarian	....	*	.....	"	$2,400.	
Supt. Weights & Measures	....	By Governor.	.....	.....	$50.	
Fish and Game Warden	....	"	.....	3 yrs.	$1,200.	Oversees Enforcement of Fish and Game Laws.
Veterinary Surgeon	....	"	.....	3 yrs.	$5 a day.	
Custodian Pub. Buildings	....	"	Senate.	2 yrs.	$1,500.	
Com. of Pharmacy	3	"	.....	3 yrs.	$5 a day.	Examine and give certificates to Practicing Druggists. (99)
Dental Examiners	5	"	.....	5 yrs.	.....	Examine Dentists.
Board of Health	7†	"	.....	7 yrs.	Expenses.	Examine Physicians, etc. Make Quarantine Laws, etc. (99)
Board of Law Examiners	5	By Sup. Court.	.....	2 yrs.	$15 a day.	Examine Applicants for Admission to the Bar.
Board of Veterinary Medical Examiners	3	By Governor.	.....	3 yrs.	$5 a day.	Examine Veterinarians.
Adjutant-General	....	"	.....	Pleasure of Gov.	$2,000.	
State Board of Control	3	"	⅔ Vote Senate.	6 yrs.	$3,000.	Controls State Institutions. (125)
Educational Board Exam.	2†	"	....	4 yrs.	$3 a day.	Grants Certificates and Diplomas to Teachers. (100)
State Binder	....	Gen. Assembly.	.....	2 yrs.	Profits.	Does Binding for State Officials.
State Printer	....	"	.....	"	"	Prints Journals of Gen. Assembly and other State Printing.

* By Board of Trustees; see § 97. † Besides *ex-officiis* members.

Buren R. Sherman ..... 1882 to 1886.
William Larrabee..... 1886 to 1890.
Horace Boies ..... 1890 to 1894.
Frank D. Jackson ..... 1894 to 1896.
Francis M. Drake ..... 1896 to 1898.
Leslie M. Shaw ..... 1898 to 1902.
Albert B. Cummins ..... 1902 to

2. United States Senators:

George W. Jones, from	1848 to 1859.	
Augustus C. Dodge, from ..	1848 to 1855.	
James Harlan, from	1855 to 1865.	
James W. Grimes, from	1859 to 1869.	
Samuel J. Kirkwood, from ..	1865 to 1867.	To fill vacancy.
James Harlan, from	1867 to 1873.	
James B. Howell, from	1870 to 1871.	To fill vacancy.
George G. Wright, from ...	1871 to 1877.	
William B. Allison, from ...	1873 to	
Samuel J. Kirkwood, from ..	1877 to 1881.	
James W. McDill, from	1881 to 1883.	To fill vacancy.
James F. Wilson, from	1883 to 1895.	
John H. Gear, from	1895 to 1900.	Died July 14, 1900.
Jonathan P. Dolliver, from .	1900 to	

267. Outline.—Executive power.

Vested in, Art. IV., Sec. 1.
- Title,
- Election, Sec. 2.
  - By whom;
  - When,
    - Year,
    - Month,
    - Day;
  - For how long,
    - Contingency;
  - Record, Sec. 3.
    - How treated,
    - To whom sent,
    - How opened,
    - How published;

Votes necessary to election, Sec. 4.
Case of tie,
How settled,
Kind of vote, Art III, Sec. 38;
Contested election,
How settled, Art. IV., Sec. 5;
Eligibility,
Citizenship,
Residence,
Age,
Sex;
Disqualifications,
Art. I., Sec. 5,
Art. II., Sec. 5,
Art. IV., Sec. 14,
Constitution of the United States, Amendment XIV.,
Sec. 3;
Term,
Begins, Sec. 15,
Ends,
Contingency;
Substitute, Sec. 17,
Title,
When does he act?
Four cases,
Usual function, Sec. 18.
Voting power,
Who presides in his absence?
Succession to the Governor's office, Sec. 19;
Custody and use of the Seal of the State of Iowa, Sec. 20;
Grants and commissions, Sec. 21,
In whose name,
How stamped,
How signed;
Functions,
Military, Sec. 7,
Administrative, Sec. 8,
Executive, Sec. 9,
Appointive, Sec 10,
Term of such appointments,
Appointing power by statute (see table);

Extra sessions of General Assembly, Sec. 11,
Statement to General Assembly,
What business may be performed at extra session ?
Advisory power, Sec. 12;
Touching adjournment, Sec. 13,
Restriction;
Pardoning, etc., Sec. 16,
Restrictions,
Constitutional,
Statutory provision, Notes,
Touching treason,
Touching murder, Code, § 5626.
Remission of fines,
Report to assembly;
Salary,
Supplementary executive officers, Sec. 22,
Titles,
Mode of election,
Term of service.

NOTE.—Although the lieutenant-governor has the right to vote in case of a tie, he very seldom exercises the right, and the privilege does not extend to cases where a *constitutional majority* (Cons. Art. III., Sec. 17) is required, as in the final passsage of a bill.

CHAPTER XX

ARTICLE V.—JUDICIAL DEPARTMENT

268. General Provision.—Section 1. The Judicial power shall be vested in a Supreme Court, District Court, and such other courts, inferior to the Supreme Court, as the General Assembly may from time to time establish.

The General Assembly has acted on the authority here granted, and has established various inferior courts, some of which have since been abolished. A description of the circuit court, which for a time shared in the work of the district court, will be given later (273).

The outline as shown on page 244 shows the court system of Iowa as it is to-day:

269. The Supreme Court.—Sec 2. The Supreme Court shall consist of three Judges, two of whom shall constitute a quorum to hold court.

Sec. 3. The Judges of the Supreme Court shall be elected by the qualified electors of the State, and shall hold their court at such time and place as the General Assembly may prescribe. The Judges of the Supreme Court so elected shall be classified so that one Judge shall go out of office every two years; and the Judge holding the shortest term of office under such classification shall be Chief Justice of the court, during his term, and so on in rotation. After the expiration of their terms of office, under such classification, the term of each Judge of the Supreme Court shall be six years, and until his successor shall have been elected and qualified. The Judges of the Supreme Court shall be ineligible to any other office in the State during the term for which they have been elected.

OUTLINE OF SYSTEM OF COURTS IN IOWA.

Name of Court.	No. of Courts.	No. of Judges.	Quorum for Deciding Cases.	Salary.	Term of Service.	When Elected.	Jurisdiction.
Supreme Court	1	6	4	$ 6000	6 yrs.	General Election Two judges every two years.	Appellate in Chancery. Correction of errors at law.
District Court	20	1–4	1	$ 3500	4 yrs.	General Election	Original 1. Civil cases involving over $ 100. 2. Criminal cases involving Fines of over $ 100. Imprisonment over 30 days.
Superior Court*	.....	1	1	$ 2000	4 yrs.	General Election	Appellate From all lower courts.
Police Court	.....	1	1	.....	2 yrs.	Municipal Election	Civil cases involving not over $ 100 or (with consent of both parties) $ 300.
Mayor's Court.....	.....	1	1	.....	Same as Mayor.	Municipal Election	Criminal cases involving Fines not over $ 100. Imprisonment not over 30 days.
Court of Justice of the Peace	2 + to a Township	1	1	Fees	2 yrs.	General Election	Appeals allowed in Civil cases involving over $ 25. Criminal cases — *always*.

* Allowed in cities of 4,000 inhabitants or over.

Sec. 4. The Supreme Court shall have appellate jurisdiction only in cases in chancery, and shall constitute a court for the correction of errors at law, under such restrictions as the General Assembly may, by law, prescribe; and shall have power to issue all writs and processes necessary to secure justice to parties, and exercise a supervisory control over all inferior judicial tribunals throughout the State.

Section 10 allows the General Assembly to change the number of judges in the supreme and district courts, and changes have been made at various times. At present there are six judges in the supreme court, two of whom go out of office every two years.

Notice that a judge of the supreme court may not resign his place on the bench to accept any other office in the State of Iowa.

Cases in chancery are cases where the strict application of the law would not work justice. Such cases are also called cases in equity. They are apt to arise in connection with partnerships, and in connection with contracts where a claim is made that an understanding exists between the parties not strictly in accordance with the wording of the contract. Errors at law are erroneous decisions by the judge of the lower court on the meaning or application of the law touching the case. In cases of appeal, the supreme court does not retry a law-case, but reviews the decisions of the lower courts, and, if wrong decisions have been made, they are revised or modified and a new trial is required in the district court.

270. Writs and Processes.—Writs of *mandamus* are orders issued by a superior court commanding an *officer* to perform his duty in some particular. A

refusal to obey such a writ is an offense called contempt of court, and is punished by fine and even by imprisonment. Not very long ago a titled and wealthy lady in England destroyed certain papers belonging to the evidence before the court in a case in which she was interested. The court declared her to be guilty of contempt, and sentenced her to six weeks imprisonment in Holloway Street Jail. Even an appeal to the Home Secretary could not save this lady of rank from serving her sentence. The dignity and authority of the court must be preserved.

Writs of injunction are orders issued by a court requiring parties to do or refrain from doing certain acts, either private or official. A writ of injunction is more generally used as a preventive than as a restorative process, although by no means confined to the former. Writs of mandamus and injunction may be and frequently are issued by lower courts, as the district court.

271. The District Court.—Sec. 5. The District Court shall consist of a single Judge, who shall be elected by the qualified electors of the District in which he resides. The Judge of the District Court shall hold his office for the term of four years, and until his successor shall have been elected and qualified; and shall be ineligible to any other office, except that of Judge of the Supreme Court, during the term for which he was elected.

Notice that the district judge *may* resign to accept the office of supreme judge.

Sec. 6. The District Court shall be a court of law and equity, which shall be distinct and separate jurisdictions, and have jurisdiction in civil and criminal matters arising in their respective districts, in such manner as shall be prescribed by law.

Equity is natural justice as distinguished from legal justice. Equitable jurisprudence in England and the United States grew up from the inadequacy of common law forms to secure justice in all cases. Equity cases are also called cases in chancery. Formerly equity cases and law cases were tried in different courts, and today the Court of Chancery in England sits at London, while the judges of the law courts go in circuit to the different counties. Cases in law and cases in equity are now commonly tried in the same court, acting in different capacities. This is the case in the district courts of Iowa, which sometimes sit as law courts and sometimes as equity courts. A lawyer was defending his client in a court of law in this State, and claimed that there was a distinct understanding between his client and the other party to the contract, putting a peculiar and uncommon construction on certain phrases in that contract. The judge reminded the lawyer that if he wished to introduce evidence of intentions at variance with the letter of contract, he must bring the case before a court of equity, and that the court was at present sitting as a court of law.

272. Civil and Criminal Cases.—Civil cases are those involving the private rights of individuals or corporations. In such cases, one party, called the plaintiff, brings suit against the other party, who is called the defendant. Both parties may be private individuals, or either may be a corporation. A fundamental principle of law is that a sovereign state may not be sued by an individual, but the United States has provided a court of claims to consider and pass judgment upon claims of citizens against the United

States. A man may not sue the State of Iowa, but he may secure a certificate as to the legality of his claim from the auditor of State, and use this in presenting his claim before the General Assembly, which, by a *two-thirds* vote, may grant an appropriation to satisfy the same. (See notes on Art. III., Sec. 31.) The outcome of a civil suit is a judgment in favor of the plaintiff or defendant, and may require the payment of a sum of money to the plaintiff. This judgment is recorded by the clerk of the court, and becomes a lien on the real property of the defendant. Criminal cases are those involving the commission of an offense against the laws of the State or municipality, a public wrong. In criminal cases the plaintiff is the State, and the defendant is the one accused of breaking the law. The outcome of a criminal case is the acquittal or conviction and punishment of the defendant.

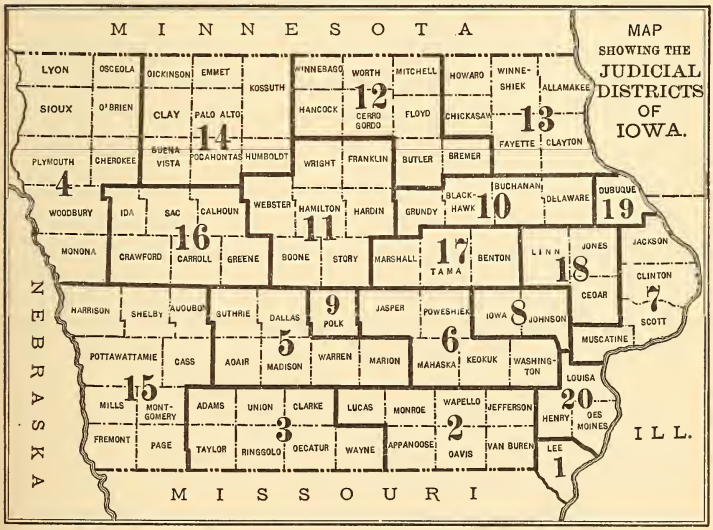
273. Style of Process, Salary, Etc.—Sec. 7. The Judges of the Supreme and District Courts shall be conservators of the peace throughout the State.

Sec. 8. The style of all process shall be "The State of Iowa," and all prosecutions shall be conducted in the name and by the authority of the same.

Sec. 9. The salary of each Judge of the Supreme Court shall be two thousand dollars per annum; and that of each District Judge, one thousand six hundred dollars per annum, until the year eighteen hundred and sixty; after which time they shall severally receive such compensation as the General Assembly may, by law, prescribe; which compensation shall not be increased or diminished during the term for which they shall have been elected.

The salary of the judges of the supreme court is now $6,000; that of the judges of the district courts is $3,500.

274. Changes in Districts and Judges.—Sec. 10. The State shall be divided into eleven Judicial Districts; and after the year eighteen hundred and sixty, the General Assembly may reorganize the Judicial Districts and increase or diminish the number of Districts, or the number of Judges of the said Court, and may increase the number of Judges of the Supreme Court, but such increase or diminution shall not be more than one District, or one Judge of either Court, at any one session; and no reorganization of the districts, or diminution of



the number of Judges, shall have the effect of removing a Judge from office. Such reorganization of the districts, or any change in the boundaries thereof, or increase or diminution of the number of Judges, shall take place every four years thereafter, if necessary, and at no other time.

(Amendment.) At any regular session of the General

Assembly, the State may be divided into the necessary Judicial Districts for District Court purposes, or the said districts may be reorganized and the number of the districts and the Judges of said courts increased or diminished; but no reorganization of the districts or diminution of the Judges shall have the effect of removing a Judge from office.

(The foregoing amendment was adopted at the general election in 1884.)

This section provides for all necessary changes in the courts of Iowa, but protects judges of the supreme and district courts from being thrown out of office before the end of the term for which they were elected, by any decrease in the number of judges. There is no such constitutional provision protecting the judges of the lower courts or of the circuit courts described in the note below. Therefore, when the circuit courts were abolished, the circuit judges lost their positions, and although they brought their cases into the Supreme Court, it was decided that they had no vested rights, and could therefore be removed with the abolition of the court by an act of the General Assembly.

Changes in the Judicial Department.—(1) The Changes in the Supreme Court. The constitution of 1846 provided for a supreme court of three members—the chief justice and two associates. In the transaction of business, two of them constituted a quorum. To provide that they should be as free from partisan politics as possible, they were elected by the General Assembly for a term of six years. To accommodate the interest of the State, the court convened at such times and places as the General Assembly directed. As a consequence of this policy, the court met for many years in various places in the State, until finally, after the completion of the capitol at Des Moines, the court was permanently located at the capital city.

The constitution of 1857 changed the plan of election of the judges so that they were chosen by the qualified electors of the State, and their terms of office were so changed as to expire at different times,

while the chief justice became the one that had the shortest time to serve, coming to this official rank by rotation. The number of judges remained for a time at three, but the amount of business so increased that it became necessary to enlarge the number to five, and afterward to six—the present number of members in the Iowa Supreme Court.

The Changes in the District Court.—(2) The constitution of 1846 provided for the organization of courts of original jurisdiction in cases in law and equity, and all civil and criminal cases arising under the laws where trial was to occur before being heard by the supreme court. At the beginning, there were four judicial districts, and one judge to each district. The number of districts was increased from time to time as the necessities of the business required.

The constitution of 1857 changed the length of the term of the district judge's office from five to four years, and the General Assembly has from time to time increased the number of districts until, in 1908, there were twenty districts, and from one to four judges in each district.

Circuit Courts.—At one time the courts had so much business that it became necessary to reorganize the courts in some ways, so as to have more judges. As the constitution then was, there was a district attorney to represent the State in all criminal actions, to each district judge, and an increase in judicial districts would multiply these district attorneys, which was not considered necessary or expedient. Hence the General Assembly provided for a new judge to each district to be called a *circuit* judge, whose jurisdiction consisted of all probate business, and besides had concurrent jurisdiction with the district court in all civil business. The criminal business belonged to the district court alone. (167.)

After the amendment to the State constitution (1884) that provided for the selection of a county attorney for each county to represent the State in all criminal actions, and the abolishment of the office of district attorney, the district court system was reorganized; the circuit court, as it had been called, was abolished, and from one to four judges were provided by law for the several districts, as the needs of the business of each district required.

275. Judges and Attorneys.— Sec. 11. The Judges of the Supreme and District Courts shall be chosen at the general election; and the term of office of each Judge shall commence on the first day of January next after his election.

Sec. 12. The General Assembly shall provide, by law, for the election of an Attorney-General by the people, whose term of office shall be two years, and until his successor shall have been elected and qualified.

Sec. 13. The qualified electors of each judicial district shall, at the time of the election of District Judge, elect a District Attorney, who shall be a resident of the district for which he is elected, and who shall hold his office for the term of four years, and until his successor shall have been elected and qualified.

(The foregoing section was stricken out and the following substituted therefor at the general election in 1884.)

Sec. 13. The qualified electors of each county shall, at the general election in the year 1886, and every two years thereafter, elect a county attorney, who shall be a resident of the county for which he is elected, and shall hold his office for two years, and until his successor shall have been elected and qualified.

Changes in the office of County Attorney.—The constitution of 1846 provided for the office of prosecuting attorney, the officer to be elected by the several counties at the general election. This officer was the advisor of the several county officers, and represented the State in all criminal cases tried before the district court. The constitution of 1857 dropped the provision regarding the county prosecuting attorney, and substituted a district attorney to be chosen by the electors of each judicial district. This was done in the interests of economy and also in the hope of providing more efficient officers than was possible under the prosecuting attorney system, since a lawyer could afford, with such an extent of territory, to give all his time to the prosecution of offenders against the criminal laws of the State.

After a time the office of district attorney was found to interfere with the proposed reorganization of the district courts, and in 1884, by a constitutional amendment, the office of *district* attorney was abolished and that of *county* attorney restored, the term of service being changed to two years.

276. The Grand Jury.—Sec. 14. It shall be the duty of the General Assembly to provide for the carry-

ing into effect of this article, and to provide for a general system of practice in all the Courts of this State.

(Amendment.) The grand jury may consist of any number of members, not less than five, nor more than fifteen, as the General Assembly may by law provide, or the General Assembly may provide for holding persons to answer for any criminal offense without the interference of a grand jury.)

(The foregoing amendment was adopted at the general election in 1884.)

Care should be taken to distinguish between a grand jury and a petit jury. The grand jury finds an indictment or presentment against a supposed criminal, charging him with the crime and requiring him to appear before the district court and be tried on the indictment. Notice that this amendment provides for abolishing the grand jury. How does this amendment affect Article I., Sec. 11, of the Bill of Rights? An indictment is an accusation formally drawn up by a prosecuting officer and laid before the grand jury, with the evidence pointing toward the guilt of the accused. If the members of the jury think the evidence sufficient to warrant a trial, they endorse the paper with the words, "A true bill." If the evidence is not, in their opinion, sufficient, they endorse the words, "Not a true bill." In the latter case, the accused is not obliged to undergo a trial, though he may be indicted by another jury later, and so brought to trial. A presentment is an accusation by a jury on their own knowledge, or on evidence before them, and is not based on the suit of the government. If the jury presents a person, he must be regularly indicted before he can be put on trial. (Hinsdale's "American Government," § 551. p. 308.)

Supreme Judges.

*†Charles Mason, 1838–47.
*†Thomas S. Wilson, 1838–47.
*Joseph Williams, 1838–55.
†John F. Kinney, 1847–54.
George Green, 1847–55.
S. C. Hastings, 1848–49.
Jonathan C. Hall, 1854–55.
†George G. Wright, 1855–70.
Wm. G. Woodward, 1855–60.
†Norman W. Isbell, 1855–56.
Lacon D. Stockton, 1856–60.
Caleb Baldwin, 1860–63.
Ralph P. Lowe, 1860–67.
John F. Dillon, 1864–70.
†Chester C. Cole, 1864–76.
Joseph M. Beck, 1868–91.
James G. Day, 1870–83.
†Elias H. Williams, 1870.
William E. Miller, 1870–75.
Austin Adams, 1876–87.
James H. Rothrock, 1876–97.
William H. Seevers, 1876–88.
†Joseph R. Reed, 1881–89.
Gifford S. Robinson, 1888–99.
Charles T. Granger, 1889–1900.
Josiah Given, 1889–1901.
LeVega G. Kinne, 1892–97.
Horace E. Deemer, 1894–.
Scott M. Ladd, 1897–.
†Chas. M. Waterman, 1898–1902.
John C. Sherwin, 1900–.
Emlin McClain, 1901–.
Silas M. Weaver, 1902–.
Charles A. Bishop, 1902–.

277. The Petit Jury.—The petit jury comprises twelve men, who listen to the evidence for and against the accused, as it is given during the trial, and at the close of the trial decide whether the defendant is guilty or not. In a trial for murder in the first degree, they also decide whether the punishment shall be death or life imprisonment at hard labor. (Code § 4731.)

* Held over from territorial government; see § 46.
† Resigned office.

"The following persons are exempt from liability to act as jurors: All persons holding office under the laws of the United States or this State; all practicing attorneys, physicians, registered pharmacists, and clergymen; all acting professors or teachers of any college, school, or other institution of learning, and all persons disabled by bodily infirmity or over sixty-five years of age; active members of any fire company, and any person who is conscientiously opposed to acting as a juror because of his religious faith." (Laws of Twenty-sixth General Assembly, page 61.) Any person may be excused from jury service when personal interests, or the health of his family require his absence from court.

Lists are annually selected by the judges of the various precincts in every county. From these lists the members of grand and petit juries are chosen by lot by a committee comprising the county auditor, clerk, and recorder. The number of names on the lists is indicated in the following tables. The number chosen by lot constitute a *panel*, and the number on each panel is indicated below. A talesman is a person summoned to complete a jury when the regular panel is exhausted by challenges or is otherwise deficient.

	GRAND JURORS.	PETIT JURORS.	TALESMEN.
Number of names in lists of counties of 20,000 or less	75	400	150
Number of names in lists of counties of over 20,000	75	800	300
Panel in counties of less than 15,000	12	15	
Panel in counties of 15,000 or more	12	24	
Limit of panel in single county districts	12	72	
Number of complete jury chosen by lot from the panel	7	12	

NOTE.—The number on the panel of a petit jury may be increased by the order of the court. Talesmen are always citizens of the town where the court is held, or of the immediately adjacent townships. The names of the jurors are to be drawn twenty days prior to the court session, and the persons chosen are summoned by the sheriff. The jury of a justice's court consists of six men, who are selected and summoned by the constable.

278. Outline.—From the above article, fill the following outline of Judicial Department:

State Courts,
- Those named in the Constitution,
- Provision for additional courts,
- History of such additions, (Note and table of courts);

Supreme Court,
- Number of Judges, Sec. 2,
  - According to the Constitution,
  - Quorum,
  - Provision for a change in number, Sec. 16,
    - Frequency of such changes,
    - Result on term of judges,
  - Number at present, (Note);
- Election,
  - How, Sec. 3.
  - When, Sec. 11.
- Term,
  - Length, Sec. 3.
  - Beginning, Sec. 11.
- Classification.
- Ineligibility.
- Chief Justice, Sec. 3.
- Jurisdiction, Sec. 4.
- Salary, Sec. 9.
  - Formerly,
  - Now,
  - How determined (Notes and table).

District Court.
Number of districts, Sec. 10.
Provision for change.
Number at present. (See map, p. 249.)
Number of Judges by Constitution, Sec. 5.
Provision for change, Sec. 10.
Frequency of change, Amendment, Sec. 10.
Result on term of Judges;
Term;
Election,
How,
When, Sec. 11;
Salary,
Formerly,
Now, Sec. 9, notes;
The Attorney-General,
Term of service, Sec. 12;
The District Attorney, Sec. 13.
(Superseded.)
The County Attorney, Amendment to Sec. 13;
The grand jury, Amendment.
Limitation as to number,
Provision for abolishing.

279. Militia.—Article VI., Section 1. The militia of this State shall be composed of all able-bodied (*white*) male citizens, between the ages of eighteen and forty-five years, except such as are or may hereafter be exempt by the laws of the United States, or of this State, and shall be armed, equipped, and trained as the General Assembly may provide by law.

(Amended by striking out the word "white," at the general election in 1868.)

Sec. 2. No person or persons conscientiously scrupulous of bearing arms shall be compelled to do military duty in time of peace; provided, that such person or persons shall pay an equivalent for such exemption in the same manner as other citizens.

All persons who have served in the United States army and have been honorably discharged, are exempt from duty under the military laws of the State, but

are allowed to join the organized militia if they wish. The unorganized militia are listed by the assessors of the various townships as stated in the chapter on local government (145), and, after being reported to the county auditor, the list is forwarded to the adjutant-general at Des Moines.

280. Officers.—Sec. 3. All commissioned officers of the militia (staff officers excepted) shall be elected by the persons liable to perform military duty, and shall be commissioned by the governor.

Commissioned officers are elected for five years by the enlisted members of the State militia; that is, by the members of the National Guard.

281. Outline Study.

Militia, Art. VI.
- Comprises whom, Section 1.
- Exception,
- How armed,
- How Equipped,
- How trained;
- The word "white";
- Exemption from duty, Sec. 2
  - Provision,
  - Meaning of same:
- Officers, Sec. 3.

CHAPTER XXI

STATE DEBTS AND CORPORATIONS

ARTICLE VII

282. Purpose and Limits.— Section 1. The credit of the State shall not, in any manner, be given or loaned to, or in aid of, any individual, association, or corporation; and the State shall never assume, or become responsible for, the debts or liabilities of any individual, association, or corporation, unless incurred in time of war for the benefit of the State.

Sec. 2. The State may contract debts to supply casual deficits or failures in revenues, or to meet expenses not otherwise provided for; but the aggregate amount of such debts, direct and contingent, whether contracted by virtue of one or more acts of the General Assembly, or at different periods of time, shall never exceed the sum of *two hundred and fifty thousand dollars*; and the money arising from the creation of such debts shall be applied to the purpose for which it was obtained, or to repay the debts so contracted, and to no other purpose whatever.

It will be seen that great pains was taken to prevent the legislature from involving the State in needless debt, but the following sections provide for exceptional cases.

283. First Exception to Limit.— Sec. 3. All losses to the permanent, school or university fund of this State, which shall have been occasioned by the defalcation, mismanagement or fraud of the agents or officers controlling and managing the same, shall be audited by the proper authorities of the State. The amount so audited shall be a permanent funded debt against the State, in favor of the respective fund, sustaining the loss, upon which not less than six per cent.

annual interest shall be paid. The amount of liability so created shall not be counted as a part of the indebtedness authorized by the second section of this article.

The educational funds of the State coming from the Federal land grants (130 and 296–301) must be sacredly guarded, and this is the first exception to the general restriction on State indebtedness. Such a loss was incurred early in the history of the State, and, in accordance with this section, the State issued bonds to the amount of $234,498.01 as a permanent debt to make good the loss to the school fund. This debt was not paid until 1893, when the United States government repaid to Iowa her share of the Direct War Tax of 1861. (Hinsdale's *American Government*, § 343.) The receipt of this money from the Federal Government enabled Iowa to pay her bonds, and left about $150,000 to be expended on a Soldiers' and Sailors' Monument to be erected on the grounds of the State Capitol. (77).

284. Second Exception to Limit.— Sec. 4. In addition to the above limited power to contract debts, the State may contract debts to repel invasion, suppress insurrection, or defend the State in war; but the money arising from the debts so contracted shall be applied to the purpose for which it was raised, or to repay such debts, and to no other purpose whatever.

All ordinary restrictions may need to be laid aside under the danger of invasion or serious insurrection, and this second exception is evidently wise and proper.

285. Third Exception.— Sec. 5. Except the debts hereinbefore specified in this article, no debt shall be hereafter contracted by or on behalf of this State, *unless* such debt shall be authorized by some law for some single work or object, to be distinctly specified therein; and such law shall impose and provide for the

collection of a direct annual tax, sufficient to pay the interest on such debt, as it falls due, and also to pay and discharge the principal of such debt, within twenty years from the time of contracting thereof, but no such law shall take effect until at a general election it shall have been submitted to the people, and have received a majority of all the votes cast for and against it at such election, and all money raised by authority of such law shall be applied only to the specific object therein stated, or to the payment of the debt created thereby, and such law shall be published in at least one newspaper in each county, if one is published therein, throughout the State, for three months preceding the election at which it is submitted to the people.

Sec. 6. The legislature may, at any time after the approval of such law by the people, if no debt shall have been contracted in pursuance thereof, repeal the same; and may, at any time, forbid the contracting of any further debt, or liability, under such law; but the tax imposed by such law, in proportion to the debt or liability, which may have been contracted in pursuance thereof, shall remain in force and be irrepealable, and be annually collected, until the principal and interest are fully paid.

The third exception to the law restricting the indebtedness of the State is based on the principle of the "referendum." In Switzerland, it is customary to require laws to be referred to the people for sanction before they take effect, and it is the opinion of many that the same plan would be of advantage in the United States. Notice how carefully provision is made for the annual payment of interest and the liquidation of the whole debt within twenty years; also for cases where the necessity disappears for borrowing the whole amount authorized.

286. Requirement.— Sec. 7. Every law which imposes, continues, or revives a tax, shall distinctly state the tax, and the object to which it is to be applied;

and it shall not be sufficient to refer to any other law to fix such tax or object.

287. Outline Study.

State debts, Art. VII.
- Prohibition against, Sec. 1.
  - Granting the credit of the state,
  - Assuming certain debts.
  - Exception;
- Contraction of state debt, Sec. 2.
  - For what purposes,
  - General limitation;
- First exception, touching certain funds, Sec. 3.
  - Provision for such cases,
- Second exception, touching public danger, Sec. 4.
  - Provision,
- Third exception, by referendum, Sec. 5.
  - How paid,
    - Limit of time,
    - Publication,
    - Payment of interest,
    - Repeal of law, Sec. 6.
      - Restriction.
- Requirement touching all laws imposing or reviving taxes, Sec. 7.

288. Corporations.—"A corporation is a body consisting of one or more natural persons, empowered by law to act as an individual, and continued by a succession of members." A corporation may own property, sue, and be sued like an individual. There are (1) *public* or municipal corporations, created for political purposes and sometimes spoken of as political corporations; (2) *private* or civil corporations created for the private emolument of the members. Cities, counties, and incorporated towns are examples of the first kind, and railroad companies, banks, and manufacturing companies are examples of the second kind.

Article VIII., Section 1. No corporation shall be created by special laws; but the General Assembly shall provide, by general laws, for the organization of all corporations hereafter to be created, except as hereinafter provided.

Sec. 2. The property of all corporations for pecuniary profit shall be subject to taxation, the same as that of individuals.

Sec. 3. The State shall not become a stockholder in any corporation, nor shall it assume or pay the debt or liability of any corporation, unless incurred in time of war for the benefit of the State.

Section 1 guards against corporations monopolizing privileges by securing rights which others may not have under similar circumstances. The justice of Sec. 2 is very evident. As the State may not be sued, it would be an unwise plan to allow a State to become a stockholder in any corporation which can be sued.

289. Prohibition.—Sec. 4. No political or municipal corporation shall become a stockholder in any banking corporation, directly or indirectly.

This means that no county, city, or town can hold stock in any bank. The county, city, and town, unlike the State, are liable to suit, but a strong prejudice against banks existed in the State when the constitution was adopted (38, 42, 43), and this section is inserted in deference to this feeling and the belief that even local government should have no interest in banking establishments.

290. Bank Legislation.—Sec. 5. No act of the General Assembly, authorizing or creating corporations or associations with banking powers, nor amendments thereto, shall take effect, or in any manner be in force, until the same shall have been submitted, separately, to the people, at a general or special election, as provided by law, to be held not less than three months after the pas-

sage of the act, and shall have been approved by a majority of all the electors voting for and against it at such election.

Here is another case of referendum. Notice the three months clause.

291. Provision for a State Bank.—Sec. 6. Subject to the provisions of the foregoing section, the General Assembly may also provide for the establishment of a State bank with branches.

Sec. 7. If a State bank be established, it shall be founded on an actual specie basis, and the branches shall be mutually responsible for each other's liabilities upon all notes, bills, and other issues intended for circulation as money.

Sec. 8. If a general banking law shall be enacted, it shall provide for the registry and countersigning, by an officer of State, of all bills, or paper credit designed to circulate as money, and require security to the full amount thereof, to be deposited with the State treasurer, in United States stocks, or in interest paying stocks of States in good credit and standing, to be rated at ten per cent below their average value in the city of New York, for the thirty days next preceding their deposit; and in case of a depreciation of any portion of such stocks, to the amount of ten per cent on the dollar, the bank or banks owning said stocks shall be required to make up said deficiency by depositing additional stocks; and said law shall also provide for the recording of the names of all stockholders in such corporations, the amount of stock held by each, the time of any transfer, and to whom. (71).

A bank wishing to have the privilege of issuing bills of credit, as they are called in the Constitution of the United States or bank bills to the amount of $9,000, must deposit United States bonds (or other security satisfactory to the State), worth $10,000 in the New York market, and if at any time these bonds come to be worth less than $9,000, more bonds must

be deposited to make up the deficiency. State banks are numerous, but none of them issue bank-bills because of the United States tax of ten per cent on State bank currency.

292. Responsibility of Stockholders. — Sec. 9. Every stockholder in a banking corporation or institution shall be individually responsible and liable to its creditors, over and above the amount of stock by him or her held, to an amount equal to his or her respective shares so held, for all of its liabilities, accruing while he or she remains such stockholder.

A stockholder owning $10,000 worth of stock is thus liable for $20,000 in case that amount is needed to make good the deficiency of funds when the bank fails.

293. Further Protective Measures.—Sec. 10. In case of the insolvency of any banking institution, the bill-holders shall have a preference over its other creditors.

Sec. 11. The suspension of specie payment by banking institutions shall never be permitted or sanctioned.

Sec. 12. Subject to the provisions of this article, the General Assembly shall have power to amend or repeal all laws for the organization or creation of corporations, or granting of special or exclusive privileges or immunities, by a vote of two-thirds of each branch of the General Assembly; and no exclusive privileges, except as in this article provided, shall ever be granted.

Any one who has a bank bill is a creditor of the bank. The general plan of State bank currency is the same as that of the National Banks, but it was of earlier date, the first National Banking Law being passed in 1863. The suspension of specie payment means the refusal to redeem obligations in real money or coin.

294. Outline Study.

Corporations.
- Provision for their organization, Section 1.
  - Restriction touching laws,
  - Taxation, Sec. 2.
  - The State as a stockholder, Sec. 3;
  - Assumption of corporation debts,
    - Exception;
  - Banking corporation, Sec. 4.
    - Restriction touching stockholders.
  - Banking laws, Sec. 5.
  - Restrictions on passing same.

State bank,
- How established, Sec. 6.
  - Restriction,
  - On what basis, Sec. 7
  - Responsibility of branches,
  - Security of currency, Sec. 8.
    - How rated.
  - Stockholders, Sec. 9.
    - Extent of responsibility;
- Creditors having preference, Sec. 10.
- Suspension of specie payment, Sec. 11.

TOPICS AND QUESTIONS.

1. A very interesting article will be found in the April (1897) number of *Iowa Historical Record*, on "Some Iowa Bank History."

2. Look up the subject of Wild-cat banking in the United States.

CHAPTER XXII

ARTICLE IX.—EDUCATION AND SCHOOL LANDS

295. State Board of Education.—The first part of Article IX. is a matter of interest simply as history. It provides for a State Board of Education, but by Section 15 allows that board to be reorganized or abolished after the year 1863. The Tenth General Assembly did abolish the board. (See Laws of Tenth General Assembly, Chapter LII., Sec. 1.) We insert the article in full, as part of the Constitution, recommending that it be read over by the class.

FIRST.

EDUCATION.—Section 1. The educational interest of the State, including common schools and other educational institutions, shall be under the management of a Board of Education, which shall consist of the lieutenant-governor, who shall be the presiding officer of the board, and have the casting vote in case of a tie, and one member to be elected from each judicial district in the State.

Sec. 2. No person shall be eligible as member of said board who shall not have attained the age of twenty-five years, and shall have been one year a citizen of the State.

Sec. 3. One member of said board shall be chosen by the qualified electors of each district, and shall hold the office for the term of four years, and until his successor is elected and qualified. After the first election under this constitution, the board shall be divided, as nearly as practicable, into two equal classes, and the seats of the first class shall be vacated after the expiration of two years; and one half of the board shall be chosen every two years thereafter.

Sec. 4. The first session of the Board of Education shall be held at the seat of government, on the first Monday of December, after their election; after which the General Assembly may fix the time and place of meeting.

Sec. 5. The session of the board shall be limited to twenty days, and but one session shall be held in any one year, except upon extraordinary occasions, when, upon the recommendation of two thirds of the board, the Governor may order a special session.

Sec. 6. The Board of Education shall appoint a secretary, who shall be the executive officer of the board, and perform such duties as may be imposed upon him by the board and the laws of the State. They shall keep a journal of their proceedings, which shall be published and distributed in the same manner as the journals of the General Assembly.

Sec. 7. All rules and regulations made by the board shall be published and distributed to the several counties, townships, and school districts, as may be provided for by the board, and when so made, published and distributed, they shall have the force and effect of law.

Sec. 8. The Board of Education shall have full power and authority to legislate and make all needful rules and regulations in relation to common schools, and other educational institutions, that are instituted to receive aid from the school or university fund of this State; but all acts, rules, and regulations of said board may be altered, amended or repealed by the General Assembly; and when so altered, amended, or repealed, they shall not be re-enacted by the Board of Education.

Sec. 9. The Governor of the State shall be, *ex officio*, a member of said board.

Sec. 10. The board shall have no power to levy taxes, or make appropriations of money. Their contingent expenses shall be provided for by the General Assembly.

Sec. 11. The State University shall be established at one place without branches at any other place, and the University fund shall be applied to that institution and no other.

Sec. 12. The Board of Education shall provide for the education of all the youths of the State, through a system of common schools, and such schools shall be organized and kept in each school district at least three months in each year. Any district failing for two consecutive years to organize and keep up a school, as aforesaid, may be deprived of their portion of the school fund.

Sec 13. The members of the Board of Education shall each receive the same per diem during the time of their session, and mileage going to and returning therefrom, as members of the General Assembly.

Sec. 14. A majority of the board shall constitute a quorum for the transaction of business; but no rule, regulation, or law, for the government of common schools or other educational institutions, shall pass without the concurrence of a majority of all the members of the board, which shall be expressed by the yeas and nays on the final passage. The style of all acts of the board shall be, "Be it enacted by the Board of Education of the State of Iowa."

Sec. 15. At any time after the year One thousand eight hundred and sixty-three, the General Assembly shall have power to abolish or re-organize said Board of Education, and provide for the educational interest of the State in any other manner that to them shall seem best and proper.

SECOND.

296. **School Funds and School Lands.**—Section 1. The educational and school funds and lands shall be under the control and management of the General Assembly of this State.

Sec. 2. The University lands, and the proceeds thereof, and all moneys belonging to said fund shall be a permanent fund for the sole use of the State University. The interest arising from the same shall be annually appropriated for the support and benefit of said University.

Sec. 3. The General Assembly shall encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement. The proceeds of all lands that have been, or hereafter may be, granted by the United States to this State, for the support of schools, which may have been, or shall hereafter be sold, or disposed of and the five hundred thousand acres of land granted to the new States, under an act act of Congress, distributing the proceeds of the public lands among the several States of the Union, approved in the year of our Lord One thousand eight hundred and forty one, and all estates of deceased persons who may have died without leaving a will or heir, and also such per cent as has been or may hereafter be granted by Congress, on the sale of lands in this State, shall be, and remain a perpetual fund, the interest of which, together with all rents of the unsold lands, and such other means as the General Assembly may provide, shall be inviolably appropriated to the support of common schools throughout the State.

297. United States Land Grants.—1. School Lands. The first land grant for school purposes originated in the ordinance of 1785, confirmed July 23, 1787, and ratified by Congress in 1789, after the adoption of the present Constitution. At first the sixteenth section of every congressional township was set apart for the maintenance of common schools. The provision for Iowa was made in a law passed by Congress in 1845. All States admitted previous to 1850 received a grant of the sixteenth section. All States organized after that time have received both the sixteenth and thirty-sixth sections of every township. In 1841, sixteen States, among which was Iowa, each received 500,000 acres of land. Later certain swamp lands were granted to Iowa and other states, and five per cent of the sale of government lands was devoted to the school fund in each State.

2. University Land Grant. Two townships have

been set apart in each State for the maintenance of higher education. This is the basis for the State universities now so common.

3. In 1862, a grant of 30,000 acres of land was made for each Senator and Representative in Congress; the proceeds of these lands was made a perpetual fund for the support of agricultural colleges in the various States. By the wording of this act the distinctive purpose of these agricultural colleges was "*without excluding* other *scientific* and *classical* studies and *including military tactics*, to teach such branches of learning as are related to agriculture and the mechanic arts in such manner as the legislatures of the States may respectively prescribe, in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions of life." See article on Land Grants in Report of Commissioner of Education for 1880, pp. xxiv-xxvi, and for 1892 and 1893, pp. 1268-1283.

298. Other Sources of School Fund.—Sec. 4. The money which may have been or shall be paid by persons as an equivalent from *exemption from military duty*, and the clear proceeds of *all fines* collected in the several counties for any breach of the penal laws, shall be exclusively applied, in the several counties in which such money is paid or fine collected, among the several school districts of said counties, in proportion to the number of youths subject to enumeration in such districts, to the support of common schools, or the establishment of libraries, as the Board of Education shall from time to time provide.

299. Care and Disposal of Funds.—Sec. 5. The General Assembly shall take measures for the protection, improvement or other disposition of such lands as

have been or may hereafter be reserved, or granted by the United States, or any person or persons, to this State, for the use of the university, and the funds accruing from the rents or sale of such lands, or from any other source for the purpose aforesaid, shall be, and remain, a permanent fund, the interest of which shall be applied to the support of said university, for the promotion of literature, the arts and the sciences, as may be authorized by the terms of such grant. And it shall be the duty of the General Assembly as soon as may be to provide effectual means for the improvement and permanent security of the funds of said university.

The agricultural grants were made five years after this Constitution went into effect. Notice that only the interest on the proceeds of the sale of lands, and the rent of the lands unsold, can be used; the principal must remain a permanent fund effectually protected from fraud by Article VII., Section 3.

300. Agents and Distribution.—Sec. 6. The financial agents of the school fund shall be the same that by law receive and control the State and county revenue for other civil purposes, under such regulations as may be provided by law.

The State and county auditors have charge of the school funds, and distribute the income as provided below.

Sec. 7. The money subject to the support and maintenance of common schools shall be distributed to the districts in proportion to the number of youths between the ages of five and twenty-one years, in such manner as may be provided by the General Assembly.

The secretary of the school board in each district makes every year an enumeration of all persons between the ages of five and twenty-one years, which serves as the basis for the distribution of school funds.

301. Outline Study.— School Funds and School Lands: Their control and management, Article IX., Part II., Section 1.

Land grants of the United States,
By ordinance of 1785,
For common schools,
For universities.
By act of Congress in 1848,
For common schools.
By act of Congress in 1841,
Effect on Iowa.
Swamp lands, 1849, 1850 and 1860.
By act of 1862.
For agricultural colleges.
Protection of the university lands, Sec. 2.
Enumeration of several aids to schools, Sec. 2-Sec. 4.
Further protection of school funds, Sec. 5.
Agents of school funds, Sec. 6.
Distribution of same, Sec. 7.

302. Amendments to the Constitution.—Article X., Section 1. Any amendment or amendments to this Constitution may be proposed in either house of the General Assembly; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment shall be entered on their journals, with the yeas and nays taken thereon, and referred to the Legislature to be chosen at the next general election, and shall be published, as provided by law, for three months previous to the time of making such choice, and if, in the General Assembly so next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the General Assembly to submit such proposed amendment or amendments to the people, in such manner and at such time as the General Assembly shall provide; and if the people shall approve and ratify such amendment or amendments, by a majority of the electors qualified to vote for members of the General Assembly, voting thereon, such amendment or amend-

ments shall become a part of the Constitution of this State.

A constitution should contain only the *fundamental law* upon which all parties are agreed and then it should not be often or easily amended. Political parties may be opposed touching statutory law, but such laws may be repealed by the next General Assembly. All parties should be equally cordial in their support of the constitution. There is a very questionable tendency of late years toward introducing into new State constitutions matters on which there is apt to be much difference of public opinion, and which ought rather to be controlled by statutes subject to legislative repeal. In our own State the method of securing an amendment is such as to protect the constitution against any hasty action. The prohibitory amendment of 1882, although it was endorsed by a majority of 30,000 votes, failed to become a part of the constitution because of a clerical error in copying. (See note on Art I., Sec. 26.) Notice the requirement to publish the proposed amendment after it has passed the General Assembly, so that the people may know its nature, and elect such members to the next General Assembly as shall carry out their desire touching the amendment.

Sec. 2. If two or more amendments shall be submitted at the same time, they shall be submitted in such manner that the electors shall vote for or against each of such amendments separately.

This is to prevent confusion and to secure a clear expression of the will of the voters.

303. Revision.—Sec. 3. At the general election to be held in the year one thousand eight hundred and

seventy, and in each tenth year thereafter, and also at such times as the General Assembly may, by law, provide, the question, "Shall there be a convention to revise the Constitution, and amend the same?" shall be decided by the electors qualified to vote for members of the General Assembly; and in case a majority of the electors so qualified, voting at such election for and against such proposition, shall decide in favor of a convention for such purpose, the General Assembly, at its next session, shall provide by law for the election of delegates to such convention,

This provision gives the people a chance to revise the constitution once in ten years.

The Constitution of Iowa was amended in 1868 by striking out the word "white," where its presence conflicted with the XIV. and XV. amendments to the Constitution of the United States. In 1880 the word "white" was by amendment stricken from qualifications of senators and representatives. In 1884, amendments 1, 2, 3, and 4 were passed:

(1) Changing the time of the general election to conform with the date set by the general government for the choice of presidential electors.
(2) Altering provisions for changing and reorganizing judicial districts.
(3) Touching the grand jury and providing for the possibility of its being abolished.
(4) Substituting a county attorney for the district attorney.

In 1904 amendments were adopted providing for biennial elections, and making new provisions as to the number and apportionment of State senators and representatives (247, 248, 249).

304. Outline Study.

Amendments,
  Proposed, Sec. 1.
    By whom.
    Vote necessary.

Advertised.
When,
How.
Endorsed by whom,
Vote necessary.
Submitted,
To whom.
Ratified,
By whom,
Vote necessary.
Provision for several amendments at once, Sec. 2.
Provision for periodic revision of the Constitution, Sec. 3.

305. Miscellaneous.—Article XI., Section 1. Jurisdiction. The jurisdiction of justices of the peace shall extend to all civil cases (except cases in chancery, and cases where the question of title to real estate may arise), where the amount in controversy does not exceed one hundred dollars, and by the consent of parties may be extended to any amount not exceeding three hundred dollars.

The subject matter of this section has already been considered under local government.

306. Size of New Counties.—Sec. 2. No new county shall be hereafter created containing less than four hundred and thirty-two square miles; nor shall the territory of any organized county be reduced below that area; except the county of Worth, and the counties west of it, along the northern boundary of this State, may be organized without additional territory.

This insures a county of twenty-four miles by eighteen miles, containing twelve Congressional townships.

307. Debt Limits of Political Corporations.—Sec. 3. No county, or other political or municipal corporations, shall be allowed to become indebted in any manner, or for any purpose, to an amount, in the aggregate, exceeding five per centum of the value of the taxable property within such county or corporation—to be ascertained by the last State and county tax lists, previous to the incurring of such indebtedness.

Restriction is here placed on the legal indebtedness of counties and cities, just as a check was put upon State indebtedness in Article VII. This does not necessarily restrict the tax rate to five per cent, but applies to the amount of debt incurred.

308. State Boundaries.—Sec. 4. The boundaries of this State may be enlarged with the consent of Congress and the General Assembly.

The enlarging of the boundaries of Iowa would encroach upon the territory of some other State, and would require the consent of that State as well as of Iowa and Congress. (United States Constitution, Art. IV., Sec. 3.)

309. Oath of Office.—Sec. 5. Every person elected or appointed to any office shall, before entering upon the duties thereof, take an oath or affirmation to support the Constitution of the United States, and of this State, and also an oath of office.

The Constitution of the United States requires this oath. (Constitution of the United States, Art. VI., Sec. 3.)

310. Vacancies.—Sec. 6. In all cases of *elections* to fill vacancies in office, occuring before the expiration of a full term, the person so elected shall hold for the residue of the unexpired term; and all persons *appointed* to fill vacancies in office shall hold until the next general election, and until their successors are elected and qualified.

Sec. 7. The General Assembly shall not locate any of the public lands which have been or may be granted by Congress to this State, and the location of which may be given to the General Assembly, upon lands actually settled, without the consent of the occupant. The extent of the claim of such occupant, so exempted, shall not exceed three hundred and twenty acres.

Sec. 8. The seat of government is hereby permanently established, as now fixed by law, at the city of Des

Moines, in the county of Polk; and the State University at Iowa City, in the county of Johnson.

311. Schedule.—The following schedule providing for transition from the old to the new Constitution is inserted simply as a part of the Constitution, and for reference.

ARTICLE XII.—SCHEDULE. Section 1. The Constitution shall be the supreme law of the State, and any law inconsistent therewith shall be void. The General Assembly shall pass all laws necessary to carry this Constitution into effect.

Sec. 2. All laws now in force and not inconsistent with this Constitution shall remain in force until they shall expire or be repealed.

Sec. 3. All indictments, prosecutions, suits, pleas, plaints, processes, and other proceedings pending in any of the courts, shall be prosecuted to final judgment and execution; and all appeals, writs of error, certiorari, and injunctions, shall be carried on in the several courts, in the same manner as now provided by law; and all offenses, misdemeanors, and crimes that may have been committed before the taking effect of this Constitution shall be subject to indictment, trial and punishment, in the same manner as they would have been had not this Constitution been made.

Sec. 4. All fines, penalties, or forfeitures due, or to become due, or accruing to the State, or to any county therein, or to the school fund, shall inure to the State, county or school fund in the manner prescribed by law.

Sec. 5. All bonds executed to the State, or to any officer in his official capacity, shall remain in force and inure to use of those concerned.

Sec. 6. The first election uuder this Constitution shall be held on the second Tuesday in October, in the year one thousand eight hundred and fifty seven, at which time the electors of the State shall elect the governor and lieutenant-governor. There shall also be elected at such election the successors of such State Senators as were elected at the August election, in the year one thousand eight hundred and fifty four, and members of the House of Representatives, who shall be elected in accordance with the act of apportionment enacted at the session of the General Assembly which commenced on the first Monday of December, one thousand eight hundred and fifty-six.

Sec. 7. The first election for secretary, auditor, and treasurer of State, attorney-general, district judges, members of the board of education, district attorneys, members of Congress, and such State officers as shall be elected at the April election, in the year one thousand eight hundred and fifty-seven (except the superintendent of public instruction), and such county officers as were elected at the August election, in the year one thousand eight hundred and fifty-six, except prosecuting attorneys, shall be held on the second Tuesday of October, one thousand eight hundred and fifty-eight: *Provided*, That the time for

which any district judge or other State or county officer elected at the April election in the year one thousand eight hundred and fifty-eight shall not extend beyond the time fixed for filling like offices at the October election, in the year one thousand eight hundred and fifty-eight.

Sec. 8. The first election for judges of the Supreme Court, and such county officers as shall be elected at the August election, in the year one thousand eight hundred and fifty-seven, shall be held on the second Tuesday of October, in the year one thousand eight hundred and fifty-nine.

Sec. 9. The first regular session of the General Assembly shall be held in the year one thousand eight hundred and fifty-eight, commencing on the second Monday of January of said year.

Sec. 10. Senators elected at the August election, in the year one thousand eight hundred and fifty-six, shall continue in office until the second Tuesday of October, in the year one thousand eight hundred and fifty-nine, at which time their successors shall be elected as may be prescribed by law.

Sec. 11. Every person elected by popular vote, by a vote of the General Assembly, or who may hold office by executive appointment, which office is continued by this Constitution, and every person who shall be so elected or appointed to any such office before the taking effect of this Constitution (except as in this Constitution otherwise provided), shall continue in office until the term for which such person has been or may be elected or appointed shall expire; but no such person shall continue in office after the taking effect of this Constitution, for a longer period than the term of such office in this Constitution prescribed.

Sec. 12. The General Assembly, at the first session under this Constitution, shall district the State into eleven judicial districts, for district court purposes, and shall also provide for the apportionment of the members of the General Assembly in accordance with the provisions of this Constitution.

Sec. 13. This Constitution shall be submitted to the electors of the State at the August election, in the year one thousand eight hundred and fifty-seven, in the several election districts in this State. The ballots at such election shall be written or printed as follows: Those in favor of the Constitution, "New Constitution—Yes." Those against the Constitution, "New Constitution—No." The election shall be conducted in the same manner as the general elections of the State, and the poll-books shall be returned and canvassed as provided in the twenty-fifth chapter of the Code, and abstracts shall be forwarded to the Secretary of State, which abstracts shall be canvassed in the manner provided for the canvass of State officers. And if it shall appear that a majority of all the votes cast at such election for and against this Constitution are in favor of the same, the Governor shall immediately issue his proclamation stating that fact, and such Constitution shall be the Constitution of the State of Iowa, and shall take effect from and after the publication of said proclamation.

Sec. 14. At the same election that this Constitution is submitted to the people for its adoption or rejection, a proposition to amend the same by striking out the word "white" from the article on the Right

of Suffrage shall be separately submitted to the electors of this State for adoption or rejection in the manner following—Namely: A separate ballot may be given by every person having a right to vote at said election, to be deposited in a separate box; and those given for the adoption of each proposition shall have the words, "Shall the word 'white' be stricken out of the article on the Right of Suffrage? Yes." And those given against the proposition shall have the words, "Shall the word 'white' be stricken out of the article on the Right of Suffrage? No." And if at said election the number of ballots cast in favor of said proposition shall be equal to the majority of those cast for and against this Constitution, then said word "white" shall be stricken from said article and be no part thereof.

Sec. 15. Until otherwise directed by law, the County of Mills shall be in and a part of the Sixth Judicial District of this State.

(AMENDMENT.) Sec. 16. The first general election after the adoption of this amendment shall be held on the Tuesday next after the first Monday in November in the year one thousand nine hundred and six, and general elections shall be held biennially thereafter. In the year one thousand nine hundred and six there shall be elected a governor, lieutenant-governor, secretary of State, auditor of State, treasurer of State, attorney-general, two Judges of the Supreme Court, the successors of the Judges of the District Court whose terms of office expire on December 31st, one thousand nine hundred and six, State senators who would otherwise be chosen in the year one thousand nine hundred and five, and members of the House of Representatives. The terms of office of the Judges of the Supreme Court which would otherwise expire on December 31st in odd-numbered years, and all other elective State, county and township officers whose terms of office would otherwise expire in January in the year one thousand nine hundred and six, and members of the General Assembly whose successors would otherwise be chosen at the general election in the year one thousand nine hundred and five, are hereby extended one year and until their successors are elected and qualified. The terms of office of senators whose successors would otherwise be chosen in the year one thousand nine hundred and seven are hereby extended one year and until their successors are elected and qualified. The General Assembly shall make such changes in the law governing the time of election and terms of office of all other elective officers as shall be necessary to make the time of their election and terms of office conform to this amendment, and shall provide which of the Judges of the Supreme Court shall serve as Chief Justice. The General Assembly shall meet in regular session on the second Monday in January, in the year one thousand nine hundred and six, and also on the second Monday in January in the year one thousand nine hundred and seven, and biennially thereafter.

(Sec. 16 is an amendment adopted at the general election of 1904. Before that time there was a general election every year, some officers being elected in the odd-numbered years and some in the even-numbered years.)

Done in convention at Iowa City this fifth day of March, in the year of our Lord one thousand eight hundred and fifty-seven, and of the Independence of the United States of America, the eighty-first. In testimony whereof we have hereunto subscribed our names.

Timothy Day,	M. W. Robinson,
S. G. Winchester,	Lewis Todhunter,
David Bunker,	John Edwards,
D. P. Palmer,	J. C. Traer,
Geo. W. Ells,	James F. Wilson,
J. C. Hall,	Amos Harris,
John H. Peters,	John T. Clarke,
Wm. H. Warren,	S. Ayres,
H. W. Gray,	Harvey J. Skiff,
Robt. Gower,	J. A. Parvin,
H. D. Gibson,	W. Penn Clark,
Thomas Seeley,	Jere. Hollingsworth,
A. H. Marvin,	Wm. Patterson,
J. H. Emerson,	D. W. Price,
R. L. B. Clarke,	Alpheus Scott,
James A. Young,	George Gillaspy,
D. H. Solomon,	Edward Johnstone,

Francis Springer, *President*.

ATTEST:

Th. J. Saunders, *Secretary*.
E. N. Bates, *Assistant Secretary*.

TOPIC FOR FURTHER STUDY.

The subject of Educational Land Grants is not generally well understood. A study of the article in the Report of the Commissioner of Education for 1892 and '93, Vol. II., pp. 1268–1283, and of the same subject as treated in Dr. Hinsdale's *The Old Northwest*, will correct several mistakes very common among teachers. The Act of July 23, 1787, is often confused with the great Ordinance of 1787, and the latter makes no such dedication of land. Even the Act of July 23 was permissory rather than mandatory, and the actual educational land grants have been made by special acts, and not by any single grant for all States.

PART III.

The Government of the United States.

CHAPTER XXIII.

THE MAKING OF THE GOVERNMENT.

The American Government. Sections 66-222 inclusive.

The United States, both as forty-six individual States and as a Nation, are an outgrowth of the Thirteen English Colonies planted on the eastern shore of North America in the years 1607–1732. The process by which this change was effected, will be briefly described in this chapter.

312. The Colonial Governments.—The Kings of England gave to the companies, proprietors, and associations that planted the Colonies certain political powers and rights. These powers and rights were formally granted in documents called charters and patents; they were duly protected by regular governments, and so became the possession of the people of the Colonies. While differing in details, these governments were alike in their larger features. There was in every Colony (1) an Assembly or popular house of legislation; (2) a Council, which served as an upper house of legislation in most of the Colonies and as an

advisory body to the governor in all of them; (3) a Governor, and (4) Courts of Law. The members of the assembly were chosen by the qualified voters. The members of the council and the governors were elected by the people in Connecticut and Rhode Island, and were appointed by the proprietors in Maryland and Pennsylvania, and by the king in the other colonies. The judges were generally appointed by the king or his representatives. Powers of local government were distributed to local officers in every Colony.

313. The Home Government. — The Kings who granted the charters and patents, for themselves and their descendants, guaranteed to their subjects who should settle in the Colonies and their children, all liberties, franchises, and immunities of free denizens and native subjects within the realm of England. Previous to the troubles that led to the Revolution, the Home government commonly left the Colonies practically alone as free states to govern themselves in their own way. Still they were colonies. The charters enjoined them not to infringe the laws of England, and Parliament passed an act expressly declaring that all laws, by-laws, usages, and customs which should be enforced in any of them contrary to any law made, or to be made, in England relative to said Colonies, should be utterly void and of none effect. Moreover, the power to decide what was so contrary the Home government retained in its own hands.

314. Dual Government.—Thus from the very beginning the Colonies were subject to two political authorities; one their own Colonial governments, the other the Crown and Parliament of England. In other words, government was double, partly local and partly general. This fact should be particularly noted, for it is the hinge upon

which our present dual or federal system of government turns. The American, therefore, as has been said, has always had two loyalties and two patriotisms.

315. Division of Authority.—In general, the line that separated the two jurisdictions was pretty plainly marked. It had been traced originally in the charters and patents, and afterwards usage, precedent, and legislation served to render it the more distinct. The Colonial governments looked after purely Colonial matters; the Home government looked after those matters that affected the British Empire. The Colonies emphasized one side of the double system, the King and Parliament the other side. There were frequent disagreements and disputes; still the Colonists and the Mother Country managed to get on together with a good degree of harmony until Parliament, by introducing a change of policy, brought on a conflict that ended in separation.

316. Causes of Separation.—The right to impose and collect duties on imports passing the American custom houses, the Home government had from the first asserted and the Colonies conceded. But local internal taxation had always been left to the Colonial legislatures. Beginning soon after 1760, or about the close of the war with France, which had left the Mother Country burdened with a great debt, Parliament began to enforce such taxes upon the people directly. These taxes the Colonies resisted on the ground that they were imposed by a body in which they were not represented or their voice heard. Taxation without representation they declared to be tyranny. At the same time, the acts relative to American navigation were made more rigorous, and vigorous measures were taken to enforce them. In the meantime the Colonies had greatly increased in

numbers and in wealth, and the idea began to take root that such a people, inhabiting such a country, could not permanently remain dependent upon England but must become an independent power. The Stamp tax was one of the objectionable taxes.

317. Independence.—The Home government dropped or changed some of its obnoxious measures, but still adhered to its chosen policy. New and more obnoxious measures were adopted, as the Massachusetts Bay Bill and the Boston Port Bill. The Congresses of 1765 and 1774 protested, but to no real purpose. Some of the Colonies, like Massachusetts, began to take measures looking to their defense against aggression; and the attempt of General Gage, commanding the British army in Boston, to counteract these measures led to the battle of Lexington, April 19, 1775, and immediately brought on the Revolutionary war. All attempts at composing the differences failing, and the theater of war continuing to widen, the American Congress, on July 4, 1776, cut the ties that bound the Thirteen Colonies to England. After eight years of war the British government acknowledged American Independence.

318. The Political Effects of Independence.—The Declaration of Independence involved two facts of the greatest importance. One was the declaration that the Colonies were free and independent States, absolved from all allegiance to the British crown. The other was the formation of the American Union. The original members of the Union as States and the Union itself were due to the same causes. The language of the Declaration is, "We, ...the representatives of the United States of America, in general congress assembled, . . . do, in the name, and by the authority, of the good people of these Colonies, solemnly publish and declare" their independence.

The States took their separate position as a nation among the powers of the earth. Thus, before the Revolution there were Colonies united politically only by their common dependence upon England; since the Revolution there have been States united more or less closely in one federal state or union.

319. The Continental Congress.—The body that put forth the Declaration of Independence, known in history as the Continental Congress, had, in 1775, assumed control of the war in defense of American rights. It had adopted as a National army the forces that had gathered at Boston, had made Washington its commander-in-chief, and had done still other things that only governments claiming nationality can do. And so it continued to act. First the American people, and afterwards foreign governments, recognized the Congress as a National government. But it was a revolutionary government, resting upon popular consent or approval, and not upon a written constitution. A government of a more regular and permanent form was called for, and to meet this call Congress, in 1777, framed a written constitution to which was given the name, "Articles of Confederation and Perpetual Union." Still Congress had no authority to give this constitution effect, and could only send it to the States and ask them for their ratifications. Some delay ensued, and it was not until March 1, 1781, that the last ratification was secured and the Articles went into operation.

320. The Confederation.—The government that the Articles provided for was very imperfect in form. It consisted of but one branch, a legislature of a single house called Congress. Such executive powers as the Government possessed were vested in this body. The States appointed delegates in such manner as they saw fit, and had an equal voice in deciding all questions. Nine States were

necessary to carry the most important measures, and to amend the Articles required unanimity. In powers the Government was quite as defective as in form. It could not enforce its own will upon the people, but was wholly dependent upon the States. It could not impose taxes or draft men for the army, but only call upon the States for money and men; and if the States refused to furnish them, which they often did, Congress had no remedy. Much of the disaster and distress attending the war grew out of the weakness of Congress, and when peace came, the States became still more careless, while Congress became weaker than ever. Meantime the state of the country was as unsatisfactory as that of the Government. The State governments were efficient, but they looked almost exclusively to their own interests. Commercial disorder and distress prevailed throughout the country. As early therefore as 1785 the conviction was forcing itself upon many men's minds that something must be done to strengthen the Government or the Union would fall to pieces.

321. Calling of the Federal Convention.—In 1785 Commissioners representing Virginia and Maryland met at Alexandria, in the former State, to frame a compact concerning the navigation of the waters that were common to the two States. They reported to their respective Legislatures that the two States alone could do nothing, but that general action was necessary. The next year commissioners representing five States met at Annapolis to consider the trade of the country, and these commissioners concluded that nothing could be done to regulate trade separate and apart from other general interests. So they recommended that a general convention should be held at Philadelphia to consider the situation of the United States, to devise further pro-

visions to render the Articles of Confederation adequate to the needs of the Union, and to recommend action that, when approved by Congress and ratified by the State Legislatures, would effectually provide for the same. This recommendation was directed to the Legislatures of the five States, but copies of it were sent to Congress also and to the Governors of the other eight States. So in February, 1787, Congress adopted a resolution inviting the States to send delegates to such a convention to be held in Philadelphia in May following. And the Legislatures of all the States but Rhode Island did so.

322. The Constitution Framed.—On May 25, 1787, the Convention organized, with the election of Washington as President. It continued in session until September 17, when it completed its work and sent our present National Constitution, exclusive of the fifteen Amendments, to Congress. In framing this document great difficulties were encountered. Some delegates favored a government of three branches; others a government of a single branch. Some delegates wanted a legislature of two houses; some of only one house. Some delegates wished the representation in the houses to be according to the population of the States; others were determined that it should be equal, as in the Old Congress. Differences as to the powers to be exercised by Congress were equally serious. There were also controverted questions as to revenue, the control of commerce, the slave trade, and many other matters. Furthermore, the opinions that the delegates held were controlled in great degree by State considerations. The large States wanted representation to be according to population; a majority of the small ones insisted that it should be equal. The commercial States of the North said Congress should control the

subject of commerce, which the agricultural States of the South did not favor. Georgia and the Carolinas favored the continuance of the slave trade, to which most of the other States were opposed. But progressively these differences were overcome by adjustment and compromise, and, at the end, all of the delegates who remained but three signed their names to the Constitution, while all the States that were then represented voted for its adoption. What had been done, however, was to frame a new constitution and not to patch up the old one. The body that framed it is called the Federal Convention.

323. The Constitution Ratified.—The Convention had no authority to make a new constitution, but only to recommend changes in the old one. So on the completion of its work, it sent the document that it had framed to Congress with some recommendations. One of these was that Congress should send the Constitution to the States, with a recommendation that the Legislatures should submit it to State conventions to be chosen by the people, for their ratification. Congress took such action, and the States, with the exception of Rhode Island, took the necessary steps to carry out the plan. Ultimately every State in the Union ratified the Constitution; but North Carolina and Rhode Island did not do so until the new Government had been some time in operation. Nor was this end secured in several of the other States, as Massachusetts, New York, and Virginia, without great opposition.

324. Friends and Enemies of the Constitution.—Those who favored the ratification of the Constitution have been divided into these classes: (1) Those who saw that it was the admirable system that time has proved it to be; (2) those who thought it imperfect but still be-

lieved it to be the best attainable government under the circumstances; (3) the mercantile and commercial classes generally, who believed that it would put the industries and trade of the country on a solid basis. Those who opposed it have been thus divided: (1) Those who resisted any enlargement of the National Government, for any reason; (2) those who feared that their importance as politicians would be diminished; (3) those who feared that public liberty and the rights of the States would be put in danger; (4)those who were opposed to vigorous government of any kind, State or National.[1]

325. The New Government Inaugurated.—The new Constitution was to take effect as soon as nine States had ratified it, its operation to be limited to the number ratifying. When this condition had been complied with, the Continental Congress enacted the legislation necessary to set the wheels of the new Government in motion. It fixed a day for the appointment of Presidential Electors by the States, a day for the Electors to meet and cast their votes for President and Vice-President, and a day for the meeting of the new Congress. The day fixed upon for Congress to meet was March 4, 1789; but a quorum of the House of Representatives was not secured until April 1, and of the Senate not until April 6, owing to various causes. On the second of these dates the Houses met in joint convention to witness the counting of the Electoral votes. Washington was declared elected President, John Adams Vice-President. Messengers were at once sent to the President- and Vice-President-elect summoning them to New York, which was then the seat of government. Here Washington was inaugurated April 30. The Legislative and Executive branches of the Government were now in motion.

[1] G. T. Curtis: *History of the Constitution*, Vol. II, pp. 495, 496.

CHAPTER XXIV.

AMENDMENTS MADE TO THE CONSTITUTION.

The American Government. Sections 457-460; 467-474; 536-537; 604-607; 623-652.

It was anticipated that amendments to the Constitution would be found necessary, and a method was accordingly provided for making them. This method embraces the two steps that will now be described.

326. Proposing an Amendment.—This may be done in either of two ways. First, Congress may propose an amendment by a two-thirds vote of each House; secondly, Congress shall, on the application of the Legislatures of two-thirds of the States, call a convention of the States for that purpose. The first way is evidently the simpler and more direct of the two, and it is the one that has always been followed.

327. Ratifying an Amendment.—This also may be done in one of two ways. One is to submit the amendment to the Legislatures of the States, and it becomes a part of the Constitution when it is ratified by three-fourths of them. The other way is to submit the amendment to conventions of the States, and it becomes binding when three-fourths of such conventions have given it their approval. Congress determines which of the two ways shall be adopted. The first is the simpler and more direct, and it has been followed in every instance.

328. Amendments I–X.—One of the principal objections urged against the Constitution when its ratification was pending in 1787–88, was the fact that it lacked a bill of rights. Such a bill, it may be observed, is a

statement of political principles and maxims. The States had fallen into the habit of inserting such bills in their constitutions. At its first session, Congress undertook to remedy this defect. It proposed twelve amendments, ten of which were declared duly ratified, December 15, 1791. These amendments, numbered I to X, are often spoken of as a bill of rights.

329. Amendment XI.—Article III of the Constitution made any State of the Union suable by the citizens of the other States and by citizens or subjects of foreign states. (See section 2, clause 1.) This was obnoxious to some of the States, and when such citizens began to exercise their right of suing States a movement was set on foot to change the Constitution in this respect. An amendment having this effect was duly proposed, and was declared ratified January 8, 1798.

330. Amendment XII.—According to the original Constitution, the members of the Electoral colleges cast both their ballots for President and neither one for Vice-President. The rule was that the candidate having most votes should be President, and the one having the next larger number Vice-President, provided in both cases it was a majority of all the Electors. In 1800 it happened that Thomas Jefferson and Aaron Burr had each an equal number of votes and a majority of all. The Democratic-Republican party, to which they belonged, had intended Jefferson for the first place and Burr for the second. The election went to the House of Representatives, and was attended by great excitement. Steps were taken to prevent a repetition of such a dead-lock. This was accomplished by an amendment declared ratified September 25, 1804.

331. Amendment XIII.—Slavery was the immediate exciting cause of the Civil War, 1861–65. In the course

of the war President Lincoln, acting as commander-in-chief of the army and navy of the United States, declared all the slaves held in States and parts of States that were engaged in the war against the Union free. The other Slave States, Delaware, Maryland, Kentucky, Tennessee, and Missouri, and parts of Louisiana and Virginia, his power did not reach as they were not in rebellion. The conviction grew strong throughout the country that slavery should not survive the war. This conviction asserted itself in Amendment XIII, which took effect December 18, 1865.

332. Amendment XIV.—At the close of the Civil War Congress was called upon to deal with the important question of readjusting the States that had seceded from the Union. It was thought necessary to incorporate certain new provisions into the Constitution. So an elaborate amendment was prepared and duly ratified. It was declared in force July 28, 1868. The most far-reaching of the new provisions were those in relation to citizenship contained in the first section.

333. Amendment XV.—Down to 1870 the States had fixed the qualifications of their citizens for voting to suit themselves. At that time most of the States, and all of the Southern States, denied suffrage to the negroes. The emancipation of the slaves, together with Amendment XIV, made the negroes citizens of the United States and of the States where they resided. But the negroes had no political power, and so no direct means of defending their civil rights. To remedy this state of things a new amendment was proposed and ratified, bearing the date of March 30, 1870. It declared that the right of citizens to vote should not be abridged, either by the United States or by any State, on account of race, color, or previous condition of servitude.

CHAPTER XXV.

THE SOURCE AND NATURE OF THE GOVERNMENT.

The American Government. Sections 223-262; 610-613; 615-620; 655-658; 773-782.

The source of the Government of the United States, and some of its leading features, are either stated or suggested in the first paragraph of the Constitution. This paragraph is commonly called the Preamble, but it is really an enacting clause, since it gives the instrument its whole force and validity.

334. The Preamble. — "We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America."

The following propositions are either asserted or implied in this language :—

1. The Government proceeds from the people of the United States. They ordain and establish it. It is therefore: a government of the people, by the people, and for the people.

2. The ends for which it is ordained and established are declared. It is to form a more perfect union, establish justice, etc.

3. It is a constitutional government. It rests upon a written fundamental law. On the one part it is opposed

to an absolute government, or one left to determine its own powers, like that of Russia; and on the other, it is opposed to a government having an unwritten constitution, consisting of maxims, precedents, and charters, like that of England.

4. The terms Union and United States suggest that it is a federal government. The peculiarity of a federal state is that local powers are entrusted to local authorities, while general powers are entrusted to general or national authorities. How this division of powers originated, and how it affected the country in 1785–1789, was pointed out in the last chapter. The government of a State has been described in Part II. of this work. Part III. is devoted to the Government that is over all the States.

5. The same terms suggest that the Government is one of enumerated powers. It must be remembered that when the Constitution was framed thirteen State governments were already in existence, and that no one dreamed of destroying them or of consolidating them into one system. The purpose was rather to delegate to the new Government such powers as were thought necessary to secure the ends named in the Preamble, and to leave to the States the powers that were not delegated, unless the contrary was directly specified.

335. The Constitution in Outline.—The Constitution is divided into seven Articles, which are again divided into sections and clauses.

ARTICLE I. relates to the Legislative power.

ARTICLE II. relates to the Executive power.

ARTICLE III. relates to the Judicial power.

ARTICLE IV. relates to several subjects, as the rights and privileges of citizens of a State in other States, the surrender of fugitives from justice, the admission of

new States to the Union, the government of the National territory, and a guarantee of a republican form of government to every State.

ARTICLE V., a single clause, relates to the mode of amending the Constitution.

ARTICLE VI. relates to the National debt and other engagements contracted previous to 1789 and the supremacy of the National Constitution and laws.

ARTICLE VII., consisting of a single sentence, prescribes the manner in which the Constitution should be ratified, and the time when it should take effect.

The fifteen Amendments relate to a variety of subjects, as has been explained in Chapter XXIV.

336. The Three Departments.—It has been seen that the Constitution distributes the powers of government among three departments, which it also ordains and establishes. This was done partly to secure greater ease and efficiency of working, and partly as a safeguard to the public liberties. Absolute governments are simple in construction, concentrating power in the hands of one person, or of a few persons; while free governments tend to division and separation of powers. In the words of Mr. Madison: "The accumulation of all powers, legislative, executive, and judiciary in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny."[1]

[1] *The Federalist*, No. 47.

CHAPTER XXVI.

THE COMPOSITION OF CONGRESS AND THE ELECTION OF ITS MEMBERS.

The American Government. Sections 263-301; 324-330.

337. Congress a Dual Body.—From an early time, the English Parliament has consisted of two chambers, the House of Commons and the House of Lords. Such a legislature is called bicameral, as opposed to one that is unicameral. The words mean consisting of two chambers and of one chamber. The great advantage of a bicameral legislature is that it secures fuller and more deliberate consideration of business. One house acts as a check or balance to the other; or, as Washington once put it, tea cools in being poured from the cup into the saucer. Countries that Englishmen have founded have commonly followed the example of the Mother Country in respect to the duality of their legislatures. Such was the case with the Thirteen Colonies, but such was not the case with the American Confederation from 1775 to 1789. In the Convention that framed the Constitution, the question arose whether the example of England and of the Colonies, or the example of the Confederation, should be followed. It was finally decided that all the legislative powers granted to the new Government should be vested in a Congress

which should consist of a Senate and a House of Representatives.

338. Composition of the Two Houses.—The House of Representatives is composed of members who are apportioned to the several States according to their respective numbers of population, and are elected for two years by the people of the States. The Senate is composed of two Senators from each State who are chosen by the Legislatures thereof, and each Senator has one vote.

The composition of Congress at first sharply divided the Federal Convention. Some members wanted only one house. Others wanted two houses. Some members were determined that the States should be represented in the new Congress equally, as had been the case in the old one. Others were determined that representation should be according to population. These controversies were finally adjusted by making two houses, in one of which representation should be equal and in the other proportional. This arrangement explains why New York and Nevada have each two Senators, while they have respectively thirty-seven members and one member in the House of Representatives. This equality of representation in the Senate is the most unchangeable part of the National Government. The Constitution expressly provides that no State shall, without its own consent, ever be deprived of its equal suffrage in the Senate, which is equivalent to saying that it shall never be done at all. No such provision is found in relation to any other subject.

339. Qualifications of Representatives and Senators.—A Representative must be twenty-five years old, and must be a citizen of the United States of at least

seven years' standing. A Senator must be thirty years of age and must be nine years a citizen. The Representative and the Senator alike must be an inhabitant of the State in which he is elected or for which he is chosen. Previous absence from the State, even if protracted, as in the case of a public minister or consul to a foreign country, or a traveler, does not unfit a man to sit in either house. Representatives are not required by law to reside in their districts, but such is the custom.

No person can be a Senator or Representative, or an Elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who having once taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an Executive or Judicial officer of any State, to support the Constitution of the United States, has afterwards engaged in insurrection or rebellion against the same, or given assistance to their enemies. But Congress may remove this disability by a two-thirds vote of each house.

340. Regulation of Elections.—The times, places, and manner of electing Senators and Representatives are left, in the first instance, to the Legislatures of the States, but they are so left subject to the following rule: "Congress may, at any time, by law, make or alter such regulations, except as to the places of choosing Senators." Defending this rule in 1788, Mr. Hamilton said: "Every government ought to contain in itself the means of its own preservation; while it is perfectly plain that the States, or a majority of them, by failing to make the necessary regulations, or by making improper ones, could break up or prevent the first elections of the Houses of

Congress." The right to name the places where Senators shall be chosen is denied to Congress for a very sufficient reason. If Congress possessed that power it could determine, or at least largely influence, the location of the State capitals.

341. Elections of Senators.—Previous to 1866, the Legislature of every State conducted these elections as it pleased. Sometimes the two houses met in joint convention, a majority of the whole body determining the choice. Sometimes the two houses voted separately, a majority of each house being required to elect. It is obvious that the two methods might operate very differently. If the same political party had a majority in both houses, the result would probably be the same in either case; but if the two houses were controlled by different parties, then the party having the majority of votes on a joint ballot would probably elect the Senator. If the second plan was followed, and the two houses differed in regard to a choice, there were delays, and elections were sometimes attended by serious scandals. So Congress, in 1866, passed a law providing that the Legislature next preceding the expiration of a Senator's term, in any State, shall, on the second Tuesday after its meeting and organization, proceed to elect a Senator in the following manner:—

1. Each house votes, *viva voce*, for Senator. The next day at twelve o'clock the two houses meet in joint session, and if it appears from the reading of the journals of the previous day's proceedings that the same person has received a majority of all the votes cast in each house, he is declared duly elected.

2. If no election has been made, the joint assembly proceeds to vote, *viva voce*, for Senator, and if any

person receive a majority of all the votes of the joint assembly, a majority of all the members elected to both houses being present and voting, such person is declared duly elected.

3. If a choice is not made on this day, then the two houses must meet in joint assembly each succeeding day at the same hour, and must take at least one vote, as before, until a Senator is elected or the Legislature adjourns.

4. If a vacancy exists on the meeting of the Legislature of any State, said Legislature must proceed, on the second Tuesday after its meeting and organization, to fill such vacancy in the same manner as in the previous case; and if a vacancy occur when the session is in progress, the Legislature must proceed, as before, to elect on the second Tuesday after they have received notice of the vacancy.

342. Vacancies.—When a vacancy occurs in the recess of the Legislature of a State, owing to death or other cause, the Governor makes an appointment that continues until the next meeting of the Legislature, when the vacancy is filled in the usual manner. In all cases of vacancies the appointed or newly elected Senator only fills out the term of his predecessor.

343. Division of Senators. — The Senators are equally divided, or as nearly so as may be, into three classes with respect to the expiration of their terms, as follows:

Class 1, 1791, 1797.....1893, 1899
Class 2, 1793, 1799.....1895, 1901
Class 3, 1795, 1801..... 1897, 1903

The two Senators from a State are never put in the same class; and as the terms of the first Senators from a State now admitted to the Union expire with the terms

of the classes to which they are assigned, one or both of them may serve less than the full term of six years.

344. Electors of Representatives.—The persons who may vote for the most numerous branch of the State Legislature in any State, or the house of representatives, may also vote for members of the National House of Representatives. Usually, however, a State has only one rule of suffrage; that is, a person who may vote for members of the lower house of the State Legislature may vote also for all State and local officers. Practically, therefore, the rule is that State electors are National electors; or, in other words, the Constitution adopts for its purposes the whole body of the State electors, whoever they may be. In Wyoming, Colorado, Idaho, and Utah women vote on the same terms and conditions as men. But in most of the States only males twenty-one years of age and upwards, having certain prescribed qualifications, are permitted to vote. In Massachusetts, Mississippi, and many other States, there is an educational qualification for the suffrage.

345. Apportionment of Representatives in the Constitution.—The Constitution provides that members of the House of Representatives shall be apportioned among the several States according to their respective numbers. The original rule for determining these numbers was that all free persons, including apprentices or persons bound to service for a term of years, but excluding Indians not taxed (or Indians living in tribal relations), and three-fifths of all other persons, should be counted. The "other persons" were the slaves. The abolition of slavery and the practical disappearance of apprenticeship have considerably simplified matters. The Fourteenth Amendment to the Constitution provides that Representatives shall be apportioned according to

population, counting the whole number of persons in a State, excluding Indians who are not taxed. This rule is applied to the people of the States regardless of age, sex, color, or condition. The Constitution further provides that the number of Representatives shall not exceed one for every 30,000 people, but that every State shall have one Representative regardless of population.

346. The Census.—The Constitution of 1787 fixed the number of members of the House of Representatives at 65, and apportioned them among the States as best it could, using the information in respect to population that was accessible. It also provided that an actual enumeration of the people should be made within three years of the first meeting of Congress, and that it should be repeated thereafter within every period of ten years. This enumeration was also called the census. In conformity with this provision, decennial censuses of the United States have been taken in 1790, 1800, 1810, etc.

347. Method of Apportionments.—The decennial apportionment of members of the House is made by Congress, and that body has performed the duty in different ways. The apportionment of 1893 was made in the following manner: First, the House was conditionally made to consist of 356 members. Next, the population of the country, not counting the Territories, was divided by this number, which gave a ratio of 173,901. The population of every State was then divided by this ratio and the quotients added, giving 339. The numbers of Representatives indicated by these quotients were then assigned to the several States, and one Representative each in addition to the seventeen States having fractions larger than one-half the ratio, thus making the original number, 356.

When a new State comes into the Union, its Representative or Representatives are added to the number previously constituting the House.[1]

348. Elections of Representatives. — For fifty years Congress allowed the States to elect their Representatives in their own way. The State Legislatures fixed the times and the places and regulated the manner of holding the elections; the elections were conducted without any regulation or control whatever being exercised by the National Government. Very naturally there were considerable differences of practice. Congress has now exercised its power of regulation in three points:

1. In 1842 Congress provided by law that, in every case where a State was entitled to more than one Representative, the members to which it was entitled should be elected by districts composed of contiguous territory equal in number to the number of Representatives to be chosen, no district electing more than one. It is, however, provided that when the number of Representatives to which a State is entitled has been diminished at any decennial apportionment, and the State Legislature has failed to make the districting conform to the change,

[1] The Numbers of the House and the Ratios of Representation are set down in the following table, with the period:

Period.	Size of House.	Ratio.
1789–1793	65	
1793–1803	105	33,000
1803–1813	141	33,000
1813–1823	181	35,000
1823–1833	212	40,000
1833–1843	240	47,700
1843–1853	223	70,680
1853–1863	234	93,503
1863–1873	241	127,941
1873–1883	292	130,533
1883–1893	332	151,911
1893–1903	356	173,901
1903–1913	386	194,182

the whole number shall be chosen by the State as a unit and not by districts. It is also provided that if the number apportioned to any State is increased, and the Legislature fails to district the State, the old districting shall stand, but that the additional member or members shall be elected by the State as a whole. Representatives elected on a general ticket, and not by district tickets, from States having more than one member, are called Representatives-at-large. Since 1872 Congress has prescribed that the districts in a State must, as nearly as practicable, contain an equal number of inhabitants. Congress has never constituted the Congressional districts, as they are called, but has always left that duty to the State Legislatures. As a rule the division of the States into districts, when once made, is allowed to stand for ten years, or until a new apportionment is made; but not unfrequently it is changed, or the State is re-districted, as the saying is, for the sake of obtaining some political advantage. The operation called "gerrymandering"[1] is only too well known in American history.

2. In 1871 Congress enacted that all votes for Representatives should be by printed ballots, but since 1899 voting machines also have been allowed.

3. In 1872 Congress prescribed that the elections should be held on the Tuesday next after the first Monday in November in every even numbered year, 1874, 1876 . . . . 1896, 1898, etc. Later legislation exempted from the

[1] The *Century Dictionary* gives the following history of this word: "*Gerrymander*. In humorous imitation of *Salamander*, from a fancied resemblance of this animal to a map of one of the districts formed in the redistricting of Massachusetts by the Legislature in 1811, when Elbridge Gerry was Governor. The districting was intended (it was believed, at the instigation of Gerry), to secure unfairly the election of a majority of Democratic Senators. It is now known, however, that he was opposed to the measure."

operation of this rule such States as had prescribed a different day in their constitutions. Accordingly Oregon elects her Representatives the first Monday of June, Vermont hers the first Tuesday of September, and Maine hers the second Monday of the same month.

In nearly every case, if not indeed in every one, the State elects State officers at the same time that the elections of the National House of Representatives are held. Moreover, the elections of Representatives are conducted by the same officers that conduct the State elections. These officers count the votes and make the returns required by law. The Representative receives his certificate of election from the Governor of his State. If a vacancy occurs in any State, owing to any cause, the Governor issues a proclamation, called a writ of election, appointing a special election to fill the vacancy.

349. Compensation of Members of Congress.— Senators and Representatives receive a compensation from the Treasury of the United States. Congress fixes by law the pay of its own members, subject only to the President's veto.[1]

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[1] The compensation at different times is exhibited in the following table:

1789–1815	$ 6.00 a day.
1815–1817	1500.00 a year.
1817–1855	8.00 a day.
1855–1865	3000.00 a year.
1865–1871	5000.00 a year.
1871–1873	7500.00 a year.
1873–1907	5000.00 a year.
1907–	7500.00 a year.

Save for a period of only two years, Senators and Representatives have always received a mileage or traveling allowance. At present this allowance is twenty cents a mile for the necessary distance traveled in going to and returning from the seat of government. The Vice-President and the Speaker of the House of Representatives now receive each a salary of $12,000 a year.

350. Privileges of Members of Congress.—In all cases but treason, felony, and breach of the peace, Senators and Representatives are exempt from arrest during their attendance at the session of their respective houses and in going to and returning from the same. In other words, unless he is charged with one or more of the grave offenses just named, a member of either house cannot be arrested from the time he leaves his home to attend a session of Congress until he returns to it. Further, a Senator or Representative cannot be held responsible in any other place for any words that he may speak in any speech or debate in the house to which he belongs. This rule protects him against prosecution in the courts, even if his words are slanderous. Still more, speeches or debates, when published in the official report called "The Congressional Record," are also privileged matter, and the speakers cannot be held accountable for libel. This freedom from arrest and this exemption from responsibility in respect to words spoken in the discharge of public duty, are not privileges accorded to the Senator and Representative in their own interest and for their own sake, but rather in the interest and for the sake of the people whom they represent. If they were liable to arrest for any trivial offense, or if they could be made to answer in a court of law for what they might say on the floor of Congress, the business of the country might be interfered with most seriously. The rights of legislative bodies must be rigidly maintained. The one rule given above is necessary to protect the freedom of representation, the other to protect the freedom of debate.

351. Prohibitions Placed Upon Members of Congress.—No Senator or Representative can, during the time for which he was elected, be appointed to any civil

office under the United States that is created, or the pay of which is increased, during such time. Appointments to many offices, and to all of the most important ones, are made by the President with the advice and consent of the Senate. Moreover, the President is always interested in the fate of measures that are pending before Congress, or are likely to be introduced into it. There is accordingly a certain probability that, if he were at liberty to do so, the President would enter into bargains with members of Congress, they giving him their votes and he rewarding them with offices created or rendered more lucrative for that very purpose. This would open up a great source of corruption. A Senator or Representative may, however, be appointed to any office that existed at the time of his election to Congress, provided the compensation has not been since increased. Still he cannot hold such office while a member of Congress. On the other hand, the Constitution expressly declares: "No person holding any office under the United States shall be a member of either house during his continuance in office."

352. Length of Congress.—The term Congress, is used in two senses. It is the name of the National Legislature as a single body, and it is also the name of so much of the continuous life of that body as falls within the full term of office of the Representative. We speak of Congress, and of a Congress. Thus there are a First, Second, ... and Fifty-fourth Congress, filling the periods 1789-1791, 1791-1793 . . . . . 1895-1897. The length of a Congress was fixed when the Convention of 1787 made the Representative's term two years. The time of its beginning and ending was due to an accident. The Old Congress provided in 1788 for setting the new Government in operation; it named

the first Wednesday of March, 1789, as the day when the two Houses of Congress should first assemble, which happened to be the fourth day of that month. Thus a point of beginning was fixed and, as the rule has never been changed, our Congresses continue to come and go on the fourth of March of every other year. The present procedure is as follows: Representatives are chosen in November of every even year, 1892, 1894, 1896, while their terms, and so the successive Congresses, begin on March 4 of every odd numbered year, 1893, 1895, 1897.

While Representatives come and go together at intervals of two years, Senators come and go in thirds at the same intervals. The result is that while a House of Representatives lasts but two years, the Senate is a perpetual body.

353. Meeting of Congress.—Congress must assemble at least once every year, and such meeting is on the first Monday of December, unless by law it names another day. Hence every Congress holds two regular sessions. Furthermore, Congress may by law provide for special sessions, or it may hold adjourned sessions, or the President, if he thinks it necessary, may call the houses together in special session. As a matter of fact, all of these things have been done at different times. As the law now stands the first regular session of Congress begins on the first Monday of December following the beginning of the Representative's term, and it may continue until the beginning of the next regular session, and commonly does continue until midsummer. The second regular session begins the first Monday of December, but can continue only until March 4 of the next year, or until the expiration of the Representative's term. It is the custom to call these the long and the short sessions.

CHAPTER XXVII.

THE ORGANIZATION OF CONGRESS AND ITS METHOD OF DOING BUSINESS.

The American Government. Sections 275; 293–294; 312–323; 331–340.

354. Officers of the Senate.—The Vice-President of the United States is President of the Senate, but has no vote unless the Senators are equally divided. The Senate chooses its other officers, the Secretary, Chief Clerk, Executive Clerk, Sergeant-at-Arms, Door Keeper, and Chaplain. The duties of these officers are indicated by their titles. The Senators also choose one of their number President *pro tempore*, who presides in the absence of the Vice-President or when he has succeeded to the office of President. The Senate is a perpetual body, and is ordinarily fully organized, although not in actual session, at any given time.

355. Officers of the House of Representatives.—The House chooses one of its members Speaker, who presides over its proceedings. It also chooses persons who are not members to fill the other offices, the Clerk, Sergeant-at-Arms, Postmaster, and Chaplain. The Speaker has the right to vote on all questions, and must do so when his vote is needed to decide the question that is pending. He appoints all committees, designating their chairmen, and is himself chairman of the important Committee on Rules. His powers are very great, and he is sometimes said to exercise as much

influence over the course of the Government as the President himself. The Speaker's powers cease with the death of the House that elects him, but the Clerk holds over until the Speaker and Clerk of the next House are elected, on which occasions he presides. It is common to elect an ex-member of the House Clerk.

356. The Houses Judges of the Election of their Members.—The Houses are the exclusive judges of the elections, returns, and qualifications of their members; that is, if the question arises whether a member has been duly elected, or whether the returns have been legally made, or whether the member himself is qualified, the house to which he belongs decides it. In the House of Representatives contested elections, as they are called, are frequent. As stated before, the Governor of the State gives the Representative his certificate of election, which is duly forwarded to Washington addressed to the Clerk of the House next preceding the one in which the Representative claims a seat. The Clerk makes a roll of the names of those who hold regular certificates, and all such persons are admitted to take part in the organization of the House when it convenes. Still such certificate and admission settle nothing when a contestant appears to claim the seat. The House may then investigate the whole case from its very beginning, and confirm the right of the sitting member to the seat, or exclude him and admit the contestant, or declare the seat vacant altogether if it is found that there has been no legal election. In the last case, there must be a new election to fill the vacancy. The Governor of the State also certifies the election of the Senator. A Senator-elect appearing with regular credentials is admitted to be sworn and to enter upon his duties, but the Senate is still at liberty to inquire into his election and qualifi-

cations, and to exclude him from his seat if, in its judgment, the facts justify such action. In respect to qualifications, it may be said that persons claiming seats, or occupying them, have been pronounced disqualified because they were too young, or because they had not been naturalized a sufficient time, or because they have been guilty of some misconduct. From the decision of the Houses in such cases there is no appeal.

357. Quorums.—The Houses cannot do business without a quorum, which is a majority of all the members; but a smaller number may adjourn from day to day, and may compel the attendance of absent members. Whether a quorum is present in the House of Representatives or not, is determined by the roll-call or by the Speaker's count. If a quorum is not present, the House either adjourns or it proceeds, by the method known as the call of the House, to compel the attendance of absentees. In the latter case officers are sent out armed with writs to arrest members and bring them into the chamber. When a quorum is obtained, the call is dispensed with and business proceeds as before. In several recent Congresses a rule has prevailed allowing the names of members who were present but who refused to vote to be counted, if necessary, for the purpose of making a quorum.

358. Rules of Proceedings.—Each house makes its own rules for the transaction of business. The rules of the Senate continue in force until they are changed, but those of the House of Representatives are adopted at each successive Congress. Still there is little change even here from Congress to Congress. Owing to the greater size of the body, the rules of the House are much more complex than the rules of the Senate. The rules of both Houses, like the rules of all legislative

assemblies in English-speaking countries, rest ultimately upon what is known as Parliamentary Law, which is the general code of rules that has been progressively developed by the English Parliament to govern the transaction of its business. Still many changes and modifications of this law have been found necessary, to adapt it to the purposes of Congress, and especially of the House of Representatives.

359. Power to Punish Members.—The Houses may punish members for disorderly behavior, and by a vote of two-thirds may expel members. These necessary powers have been exercised not unfrequently. In 1842 the House of Representatives reprimanded J. R. Giddings, of Ohio, for introducing some resolutions in relation to slavery; while the Senate in 1797 expelled William Blount, of Tennessee, for violating the neutrality laws, and in 1863 Mr. Bright, of Indiana, for expressing sympathy with the Southern secessionists. From the decisions of the Houses in such cases there is no appeal.

360. Journals and Voting.—The Houses are required to keep a full history of their proceedings in records called journals, and to publish the same except such parts as in their judgment require secrecy. But as the House of Representatives always sits with open doors, the provision in respect to secrecy has no practical effect in that body. It is also null in the Senate except in executive sessions. These are secret sessions held for the transaction of special business sent to the Senate by the President, as the consideration of treaties and nominations. The yeas and nays must be called, and must be entered on the journal, when such demand is made by one-fifth of the members present. The object of these rules is to secure full publicity in regard to what is done in Congress. On the call of the roll, which is the only

form of voting known in the Senate, members are entered as voting yea or nay, as absent or not voting. In the House votes are taken in three other ways: by the *viva voce* method, the members answering aye or no when the two sides of the question are put; by the members standing until the presiding officer counts them; by the members passing between two men called tellers, who count them and report the numbers of those voting on the one side and on the other, to the Chair.

361. Mode of Legislating.—A bill is a written or printed paper that its author proposes shall be enacted into a law. Every bill that becomes a law of the United States must first pass both Houses of Congress by majority votes of quorums of their members. Still more, this must be done according to the manner prescribed by the rules, which on this subject are very minute. For example, no bill or joint resolution can pass either house until it has been read three times, and once at least in full in the open house. The presiding officers of the two Houses certify the passage of bills by their signatures. When a bill has thus passed Congress it is sent to the President for his action, who may do any one of three things with it.

362. Action of the President.—1. The President may approve the bill, in which case he signs it and it becomes a law.

2. He may disapprove the bill, in which case he sends it back to the house that first passed it, or in which it originated, with his objections stated in a written message. In such case he is said to veto it. This house now enters the message in full on its journal and proceeds to reconsider the bill. If two-thirds of the members, on reconsideration, vote to pass the bill, it is sent to the other house, which also enters the message

on its journal and proceeds to reconsider. If two-thirds of this house also vote for the bill, it becomes a law notwithstanding the President's objections. The bill is now said to pass over the President's veto. In voting on vetoed bills the Houses must vote by yeas and nays, and the names of those voting are entered on the journal. If the house to which the bill is returned fails to give it a two-thirds vote, the matter goes no farther; if the second one fails to give it such vote, the failure is also fatal. In either case the President's veto is said to be sustained.

3. The President may keep the bill in his possession, refusing either to approve or disapprove it. In this case, it also becomes a law, when ten days, counting from the time that the bill was sent to him, have expired, not including Sundays. However, to this rule there is one important exception. If ten days do not intervene between the time that the President receives the bill and the adjournment of Congress, not counting Sundays, it does not become a law. Accordingly the failure of the President to sign or to return a bill passed within ten days of the adjournment defeats it as effectually as a veto that is sustained by Congress could defeat it. The President sometimes takes this last course, in which case he is said to "pocket" a bill or to give it a "pocket" veto.

363. Orders, Resolutions, and Votes. — Every order, resolution, or vote to which the concurrence of both Houses of Congress is necessary, save on questions of adjournment, must be sent to the President for his approval. This rule prevents Congress enacting measures to which the President may be opposed by calling them orders, resolutions, or votes and not bills. Still the resolutions of a single house, or joint resolutions that merely declare opinions and do not enact legislation, are not subject to this rule. Nor is it necessary for the Pres-

ident to approve resolutions proposing amendments to the Constitution of the United States.

364. The Committee System.—To a great extent legislation is carried on in both Houses by means of committees. These are of two kinds. Standing committees are appointed on certain subjects, as commerce, the post-office, and foreign affairs, for a Congress. Special committees are appointed for special purposes. The House of Representatives has about sixty standing committees; the Senate not quite so many. All House committees are appointed by the Speaker. Senate committees are elected by the Senators on caucus nominations. The standing committees of the House and of the Senate consist of from three to seventeen members each. The committees draw up bills, resolutions, and reports, bringing them forward in their respective houses. To them also bills and resolutions introduced by single members are almost always referred for investigation and report before they are acted upon in the house.

365. Adjournments.—The common mode of adjournment is for the two Houses to pass a joint resolution to that effect, fixing the time. The President may, in case of a disagreement between the Houses respecting the time of adjournment, adjourn them to such time as he thinks proper; but no President has ever had occasion to do so. Neither House, during the session of Congress, can, without the consent of the other, adjourn for more than three days, or to any other place than the one in which Congress shall be sitting at the time. It is therefore practically impossible for the two Houses to sit in different places, as one in Washington and the other in Baltimore. As is elsewhere explained, the Senate may sit alone to transact executive business, if it has been convened for that purpose.

CHAPTER XXVIII.

THE IMPEACHMENT OF CIVIL OFFICERS.

The American Government. Sections 302-311; 484.

366. **Impeachment Defined.**—In the legal sense, an impeachment is a solemn declaration by the impeaching body that the person impeached is guilty of some serious misconduct that affects the public weal. In the United States, the President, Vice-President, and all other civil officers are subject to impeachment for treason, bribery, or other high crimes and misdemeanors. In England, military officers and private persons may be impeached as well as civil officers. The other crimes and misdemeanors mentioned in the Constitution are not necessarily defined or prohibited by the general laws. In fact, few of them are so treated. Impeachment is rather a mode of punishing offenses that are unusual, and that, by their very nature, cannot be dealt with in the general laws. Thus Judge Pickering was impeached in 1803 for drunkenness and profanity on the bench, and Judge Chase the next year for inserting criticisms upon President Jefferson's administration in his charge to a grand jury, while President Johnson was impeached in 1867, among other things, for speaking disparagingly of Congress. But none of these acts were prohibited by the laws. Senators and Representatives are exempt from impeachment.

367. **The Power of the House.**—The House of Representatives has the sole power of impeachment, as

the House of Commons has in England. The following are the principal steps to be taken in such case. The House adopts a resolution declaring that Mr. —— be impeached. Next it sends a committee to the Senate to inform that body of what it has done, and that it will in due time exhibit articles of impeachment against him and make good the same. The committee also demands that the Senate shall take the necessary steps to bring the accused to trial. Then the House adopts formal articles of impeachment, defining the crimes and misdemeanors charged, and appoints a committee of five managers to prosecute the case in its name, and in the name of the good people of the United States. These articles of impeachment are similar to the counts of an indictment found by a grand jury in a court of law.

368. The Power of the Senate.—The action of the House of Representatives settles nothing as to the guilt or innocence of the person accused. The Constitution places the power to try impeachments exclusively in the Senate, as in England it is placed exclusively in the House of Lords. So when the House has taken the first step described in the last paragraph, the Senate takes the action that is demanded. It fixes the time of trial, gives the accused an opportunity to file a formal answer to the charges that have been made against him, and cites him to appear and make final answer at the time that has been fixed upon for the trial. The Senators sit as a court, and when acting in such a capacity they must take a special oath or affirmation. When the President is tried, the Chief Justice presides. No person shall be convicted unless two-thirds of the Senators present vote that he is guilty of one or more of the offenses charged. As the Vice-President would have a personal interest in the issue should the President be put on trial, owing to

the fact that the Vice-President succeeds to the presidency in case of the removal of the President, it would manifestly be a gross impropriety for him to preside in such case. He would be in a position to influence the verdict.

369. **The Trial.**—The Senate sits as a court, as before explained. The ordinary presiding officer occupies the chair on the trial, save in the one excepted case of the President. At first the House of Representatives attends as a body, but afterwards only the five managers are expected to attend. The accused may attend in person and speak for himself; he may attend in person, but entrust the management of his cause to his counsel; he may absent himself altogether, and either leave his cause to his counsel or make no defense whatever. Witnesses may be brought forward to establish facts, and all other kinds of legal evidence may be introduced. The managers and the counsel of the accused carry on the case according to the methods established in legal tribunals. When the case and the defense have been presented, the Senators discuss the subject in its various bearings, and then vote yea or nay upon the various articles that have been preferred. The trial is conducted with open doors, but the special deliberations of the Senate are carried on behind closed doors. A copy of the judgment, duly certified, is deposited in the office of the Secretary of State.

370. **Punishment in Case of Conviction.**—The Constitution declares that judgment in cases of conviction shall not go further than to work the removal of the officer convicted from his office, and to render him disqualified to hold and enjoy any office of honor, trust, or profit under the United States. It declares also that all persons who are impeached shall be removed from office

on conviction by the Senate. Here the subject is left. It is therefore for the Senate to say whether, in a case of conviction, the officer convicted shall be declared disqualified to hold office or not, in the future, and this is as far as the discretion of the Senate extends. Whatever the punishment may be, it is final and perpetual. The President is expressly denied the power to grant reprieves and pardons in impeachment cases. This is because such power, once lodged in his hands, would be peculiarly liable to abuse. But this is not all. If the crimes or misdemeanors of which an officer has been convicted are contrary to the general laws, he is still liable to be indicted, tried, judged, and punished by a court of law just as though he had not been impeached.

371. Impeachment Cases.—There have been but eight such cases in the whole history of the country. William Blount, Senator from Tennessee, 1797–98; John Pickering, District Judge for New Hampshire, 1803–1804; Samuel Chase, Justice of the Supreme Court, 1804–1805; James Peck, District Judge for Missouri, 1829–1830; W. W. Humphreys, District Judge for Tennessee, 1862; Andrew Johnson, President of the United States, 1867; W. W. Belknap, Secretary of War, 1876; Charles Swayne, District Judge for Northern Florida, 1905. Only Pickering and Humphreys were found guilty.

CHAPTER XXIX.

THE GENERAL POWERS OF CONGRESS.

The American Government. Sections 341-418.

In a free country the legislative branch of the government tends to become the most powerful of all the branches, overtopping both the executive and the judiciary. This is true in the United States. The powers of Congress are divisible into general and special powers, of which the first are by far the more important. The general powers are described in section 8, Article 1, of the Constitution, and occupy eighteen clauses. They will now be described.

372. Taxation.—Revenue is the life-blood of government. The first Government of the United States failed miserably, and largely because it could not command money sufficient for its purposes. When the present Government was constituted, good care was taken to guard this point. It was clothed with the most ample revenue powers. Congress may, without limit, lay and collect taxes to pay the debts and provide for the common defense and general welfare of the United States. These taxes are of two kinds, direct and indirect. Direct taxes are taxes on land and incomes and poll or capitation taxes. Here the taxes are paid by the person owning the land or enjoying the income. Taxes on imported goods, called custom duties and sometimes imposts, and taxes on liquors paid at the distillery or brewery, and on cigars and tobacco paid at the factory, are indirect taxes. Here the tax is added to the price of the article

by the person who pays it in the first instance, and it is ultimately paid by the consumer. Taxes of the second class are collectively known as internal revenue to distinguish them from customs or duties, which might be called external revenue. The term excise, used in the Constitution, but not in the laws, applies to this great group of taxes. They are collected through the Internal Revenue Office in the Treasury Department. Direct taxes have been levied only five times by the National Government. Customs and internal revenue have always been its great resources.

373. Special Rules.—In levying taxes Congress must conform to several rules that the Constitution prescribes. All taxes must be uniform throughout the United States. In legislating on commerce and revenue, Congress must take care not to show a preference for the ports of one State over those of another State. Direct taxes, like Representatives, must be apportioned among the States according to population. And finally, no tax or duty can be laid on any article of commerce exported from any State.

374. Borrowing Money—Bonds.—Public expenditures cannot always be met at the time by the public revenues. It becomes necessary in emergencies for governments to borrow money and contract debts. Congress borrows money on the credit of the United States. The principal way in which it exercises this power is to sell bonds. These bonds are the promises or notes of the Government, agreeing to pay specified amounts at specified times at specified rates of interest. During the Civil War more than five billion dollars of such bonds were sold, many of them to replace others that were cancelled. At the present time a large amount of Government bonds is outstanding.

375. Treasury Notes.—Congress also authorizes the issue of Treasury notes, called by the Constitution "bills of credit." They are paid out by the Treasury to meet the expenses of the Government, and while they continue to circulate they constitute a loan that the people who hold them have made to the Government. Such notes were occasionally issued before the Civil War, and since that event they have played a very important part in the history of the National finances. In 1862 Congress authorized the issuance of Treasury notes that should be a legal tender in the payment of all debts, public and private, except duties on imports and interest on the National debt. These notes were not payable on demand, or at any particular time; they did not bear interest, and were not for the time redeemable in gold or silver, which, since 1789, had been the only legal-tender currency of of the country. In 1879 the Treasury, in obedience to a law enacted several years before, began to redeem these notes in gold on presentation, and it has continued to do so until the present time. Still they have never been retired from circulation, or been cancelled on redemption, but have been paid out by the Treasury the same as other money belonging to the government. They are popularly called "greenbacks."

376. Commerce.—Congress has power to regulate commerce with foreign nations, among the States, and with the Indian tribes. The exclusive control of commerce by the States, under the Confederation, was a principal cause of the hopeless weakness of that government. (See Chap. XX.) It may indeed be said that the commercial necessities of the country, more than anything else, compelled the formation of the new Government in 1789. Tariff laws, or laws imposing duties on imported goods, are regulations of commerce, and so are laws

imposing tonnage duties, or duties on the carrying capacity of ships, and laws prescribing the manner in which the foreign trade of the country shall be carried on. The construction or improvement of harbors, the building of lighthouses, surveys of the coasts of the country, and laws in relation to immigration all come under the same head. In order the better to regulate commerce among the States, Congress created the Interstate Commerce Commission, and it has passed a law in relation to the subject of trusts. The Constitution lays down the rule that vessels bound to or from one State shall not be required to enter, clear, or pay duties in another State.

377. Naturalization.—All persons born or naturalized in the United States and subject to their jurisdiction are citizens of the United States, and of the State in which they reside. Citizenship, or the state of being a citizen, is membership in the state or body politic. Congress has provided that a foreigner, unless he belongs to the Mongolian race, may become a citizen or be naturalized, as the saying is, on his compliance with certain conditions. A residence of five years is necessary. At least two years before his admission to citizenship the alien must declare on oath, before a court of record, his intention to become a citizen. On the expiration of the two years, he must sign a petition and later prove to the court by two citizen witnesses that he has resided in the United States at least five years, and in the State or Territory at least one year; that he is a man of good moral character; that he is attached to the Constitution, and well disposed to the United States. If not a "homesteader," he must be able to speak English. He must also swear to support the Constitution, must renounce all allegiance to any foreign state or prince,

and lay aside any title of nobility that he has held. He then receives a certificate stating that he is a citizen of the United States, and he becomes entitled to all the rights of a native-born citizen, except that he can never be President or Vice-President. His wife and his children under twenty-one years of age also become citizens. All laws in relation to naturalization must be uniform. The States may confer political rights upon foreigners, as the right to own land and vote within the State, but they cannot confer citizenship.

378. Bankruptcies.—A person who is insolvent, or unable to pay his debts, is termed a bankrupt; and a law that divides the property of such person among his creditors and discharges him from legal obligation to make further payment, is termed a bankrupt law. Congress has power to pass uniform laws in relation to this subject. It has passed four such laws, one in 1800, one in 1840, one in 1867, and one in 1898. The first three were in force only about sixteen years. The States sometimes pass insolvent laws, having somewhat the same effect as bankrupt laws, but they are always subject to the National bankrupt law when there is one in force.

379. Coinage of the United States.—Congress coins money and regulates its value and the value of foreign coin circulating in the country. This power, taken in connection with other powers, enables Congress, if it chooses, to regulate the whole subject of money. At the present time the National mints are open to all persons for the coinage of gold. Depositors of standard gold are charged merely the value of the copper used in alloying the coin. The gold coins of the Government are the double-eagle, eagle, half-eagle, quarter-eagle, three-dollar piece, and one-dollar piece. These coins are legal tender in payment of all debts, public and

private.[1] Silver coins are now struck at the mints only on account of the Government, and not on account of private persons. These coins are the half-dollar, quarter-dollar, and dime, which are legal tender for debts not exceeding ten dollars. The Government also strikes coins of base metal for small change; the five-cent piece and the one-cent piece, which are legal tender in sums not exceeding twenty-five cents. At different times still other coins have been struck, and some of them are still in circulation. Mention may be made of the dollar, the trade dollar, the two-cent piece, and the half-dime.

380. The Silver Dollar.—The silver dollar was the original money-unit of the United States. It was coined, though never in very large quantities, from the founding of the mint in 1792 until 1873, when it was dropped from the list of legal coins. This fact is expressed in the phrase, "silver was demonetized." The minor silver coins, however, were produced as before. Congress also authorized for several years a new coin, called the trade dollar. In 1878 Congress restored the old silver dollar to the list of authorized coins, and instructed the Secretary of the Treasury to purchase silver bullion for the Government and to coin it into dollars, not less than $2,000,000, nor more than $4,000,000, a month. These dollars were also made a legal tender. In 1890 Congress passed a further act instructing the Secretary to purchase 4,500,000 ounces of silver a month on Government account, as before, and to coin it after July, 1891, at his discretion. In 1893 Congress repealed the purchase clause of the previous act, and the further

[1] Legal-tender money is money with which a debtor can legally pay a debt; that is, if he offers or tenders this money to his creditor, and his creditor refuses to take it, he is not obliged to make other payment

coinage of silver dollars was discontinued. At no time since 1873 have private persons been permitted to deposit silver at the mints for coinage.

381. Fineness and Weight of Coins and Ratio of Metals.—The gold and silver coins of the United States are nine-tenths fine; that is, nine parts of the coins are pure metal and one part is alloy. This is called standard metal. Since 1834, the gold dollar has contained 23.2 grs. of pure metal and 25.8 grs. of standard metal. Since 1792 the silver dollar has contained 371¼ grs. of pure metal, and since 1837, 412½ grs. of standard metal. It is common to call the last named coin the 412½ gr. dollar. The amount of pure silver in a dollar's worth of the minor coins is 347.22 grs., and of standard silver 385.8 grs. The ratio of the gold dollar to the silver dollar is popularly said to be 1 to 16. Exactly it is 1 to 15.988. This has been the legal ratio since 1837. When it was established Congress assumed that 16 grs. of silver (nearly so) were equal to one grain of gold in value.

382. Gold and Silver Certificates.—To dispense with the necessity of handling so much metallic money, Congress has provided for the issuance of gold and silver certificates. One of these certificates is simply a statement that in consequence of the deposit of —— dollars of gold or silver, as the case may be, in the Treasury, the Government will pay the holder of the certificate the corresponding amount. These certificates pass as money, but are not a legal tender.

383. Counterfeiting.—Congress provides by law for punishing counterfeiting the coin and securities of the United States, its notes, bonds, etc. The term counterfeiting includes (1) manufacturing or forging coins or paper securities; (2) putting forged coins or securities in circulation; and (3) having them in possession for

that purpose. A person guilty of any one of these three offenses is punishable on conviction by a fine of not more than $5,000 and by imprisonment at hard labor for not more than ten years. Counterfeiting the notes of the National banks, letters patent, money orders, postal cards, stamped envelops, etc., is punishable by severe penalties; as is also counterfeiting the coins and securities of foreign governments.

384. The Independent Treasury. — Previous to 1846, save for a short period, the Government had no treasury of its own, but kept its money in the banks and checked it out as it had occasion. In the year named a treasury was established in the Treasury Building at Washington, provided with rooms, vaults, and safes, and a Treasurer was appointed. Subtreasuries were also established in the principal cities of the country and put in charge of officers known as Subtreasurers. Subtreasuries are now to be found in New York, Boston, Philadelphia, Baltimore, Cincinnati, Chicago, St. Louis, New Orleans, and San Francisco.

385. The National Banks.—In 1863 and 1864 Congress provided for the creation of the present system of National banks, which have played so important a part in the business of the country. These banks are directly managed by boards of directors chosen by their stockholders, but they are supervised by the Comptroller of the Treasury, whose office is established in the Treasury Department. Their notes or bills, which are fully secured by National bonds belonging to the banks that are deposited in the office of the Comptroller at Washington, constitute a National currency.

386. Weights and Measures.—Congress has power to fix tne standard of weights and measures, but has never fully exercised the power. In general the standards in

use are the same as those in use in England. The English brass Troy pound is the legal Troy pound at the mints, while the Imperial avoirdupois pound and the wine gallon rest upon usage. Congress has authorized the use of the metric system of weights and measures, but has not made it compulsory.

387. **The Postal Service.**—Congress has created the vast postal system of the country, the cost of which in the year 1906 was more than $178,000,000. The mails are carried by contractors. Postmasters paid $1,000 or more a year are appointed by the President for a term of four years; all others by the Postmaster-General at his pleasure. A great majority of the postmasters do not receive regular salaries, but a percentage on the income of their offices. Towns having gross post-office receipts of $10,000 or more have free mail delivery by letter-carriers. In such towns, and at all houses within a mile of a post-office, letters bearing a special 10-cent stamp are delivered by a special carrier immediately on their receipt. Letters may also be registered to secure their greater safety in delivery, on payment of an 8-cent fee. Money orders are also sold by certain post-offices called money-order offices, which to a limited extent take the place of money in the transaction of business.

388. **Rates of Postage.**—There are four classes of domestic mail matter bearing different rates of postage. All postage must be prepaid in the form of stamps.

1. Letters, postal cards, and other written matter, and all packages that are closed to inspection. Save on postal cards and drop letters mailed at non-delivery offices, the rate is two cents an ounce or fraction of an ounce.

2. Periodicals, magazines, etc. The rate on matter of this class when sent from a registered publishing

office, or a news agency, is one cent a pound; when sent otherwise, it is one cent for every four ounces.

3. Books, authors' copy accompanying proof-sheets, etc., are charged one cent for two ounces or fraction of the same.

4. Merchandise limited to 4-pound packages is charged one cent an ounce.

389. Copyrights and Patent Rights.—For promoting science and the arts, Congress provides that authors may copyright their works and inventors patent their inventions for limited times. The author of a book, chart, engraving, etc., by means of a copyright, enjoys the sole liberty of printing, publishing, and selling the same for twenty-eight years, and on the expiration of this time he, if living, or his wife or his children if he be dead, may have the right continued fourteen years longer. An inventor also, by means of letters patent, enjoys the exclusive right to manufacture and sell his invention for seventeen years, and on the expiration of that period the Commissioner of Patents may extend the right, if he thinks the invention sufficiently meritorious. Copyrights are obtained from the head of the Library of Congress, patent rights from the head of the Patent Office, both at Washington. The cost of a copyright is one dollar and two copies of the book or other work. The cost of a patent right is $35.00. Every article that is copyrighted or patented must be appropriately marked.

390. Piracies and Felonies.—Congress defines the punishment of piracies and felonies on the high seas, and offenses against the Law of Nations. In a general sense piracy is robbery or forcible depredation of property on the seas, but Congress has by law declared some other acts, as engaging in the slave trade, to be piracy.

Felonies, strictly speaking, are crimes punishable by death. The Law of Nations is a body of rules and regulations that civilized nations observe in their intercourse one with another. The high seas are the main sea or ocean, which the law of nations limits by a line drawn arbitrarily at one marine league, or three miles, from the shore.

391. Powers of Congress in Relation to War.—Congress has the power to declare war, which in monarchical countries is lodged in the Crown. It raises and supports armies. It provides a navy. It makes rules for the government of the army and navy. It provides for calling out the militia of the States to execute the laws of the Union, to suppress insurrection, and repel invasion. It provides for organizing, arming, and disciplining the militia, and for the government of such of them as may be called into the service of the United States; but the States have authority to appoint the officers and to train the militia according to the discipline that Congress has prescribed. These powers are very far-reaching. Acting under the laws of Congress, President Lincoln, in the course of the Civil War, called into the service of the Union fully 3,000,000 men. A navy counting hundreds of vessels was also built. At present the army consists of less than 100,000 officers and enlisted men. The navy of Civil War times soon became antiquated; but since about 1885 a fine modern navy has been built,—one of the great armaments of the world. The soldiers of the United States are divided into the regular troops and the militia. The former are in constant service; the latter are the citizen soldiery enrolled and organized for discipline and called into service only in emergencies. In the fullest sense of the word, the militia are the able-bodied male citizens of the States

between the ages of eighteen and forty-five. The President cannot call them into active service for a longer period than nine months in any one year. In service, they are paid the same as the regular troops.

392. The Federal District.—Previous to 1789 the United States had no fixed seat of government, and Congress sat at several different places. The resulting evils led the Convention of 1787 to authorize Congress to exercise an exclusive legislation over a district, not more than ten miles square, that particular States might cede and Congress might accept for a capital. The cession of Maryland and the acceptance of Congress made the District of Columbia the Federal District, and an act of Congress made Washington the Capital of the Union. The various branches of the Government were established there in 1800. The District is now governed by a board of three commissioners, two appointed by the President and Senate, and one an engineer of the army who is detailed by the President for that purpose. Congress pays one-half the cost of government, the people of the District the other half. Congress also has jurisdiction over places within the States that have been purchased for forts, arsenals, magazines, dock-yards, and other needful public buildings.

393. Necessary Laws.—It must be borne in mind that the government of the United States is a government of delegated powers. Still these powers are not all expressly delegated. There are powers delegated by implication, as well as powers delegated in words. Congress is expressly authorized to make all laws that are necessary for carrying into effect the powers that have been described above, and all other powers that the Constitution vests in the Government of the United States, or any department or officer of that Government.

Congress improves harbors, erects lighthouses, builds post-offices and custom houses, and does a thousand other things that are not particularly named in the Constitution, because in its judgment they are necessary to the execution of powers that are particularly named. The power to establish post-roads and post-offices, for example, or to create courts, involves the power to build buildings suitable for these purposes. This is known as the doctrine of implied powers.

Looking over the general powers of legislation that are vested in Congress, described above, we see how necessary they are to a strong and efficient government. They are the master power, the driving force, of our whole National system. If these eighteen clauses were cut out of the Constitution, that system would be like a steamship without an engine.

CHAPTER XXX.

ELECTION OF THE PRESIDENT AND THE VICE-PRESIDENT.

The American Government. Sections 446–474.

It is the business of the Executive Department of the Government to enforce the laws that the Legislative Department makes. Government in a free country begins with law-making, but it ends with law-enforcing. We are now to examine in two or three chapters the National Executive.

394. The Presidency.—Congress consists of two Houses, and each house consists of many members, but the Executive office is single, entrusted to one person. The Constitution vests the executive power in the President of the United States. This difference is due to the nature of the things to be done. Legislation demands varied knowledge, comparison of views, and deliberation. Administration calls for vigor, unity of purpose, and singleness of responsibility. The burden of National administration is imposed upon the shoulders of one man.

395. Presidential Electors.—The President and the Vice-President are elected by Electors appointed for that purpose. Each State appoints, in such manner as its Legislature may determine, a number of Electors equal to the whole number of its Senators and Representatives in Congress. Early in the history of the Government, different modes of appointing Electors were followed. Since the Civil War, with a single exception, there has been only one mode. All the States now proceed in the same way. This is to submit the question to

the people of the States at a popular election. With this point clearly in mind, we shall go forward to describe the whole series of steps that are taken in electing the President and the Vice-President of the United States.

396. Presidential Nominations.—Government in the United States, as in other free countries, is carried on by means of political parties. These party organizations desire to elect the President and control the Government. They hold National conventions, generally in the period June–August of the year before a President is to take his seat, to nominate candidates for President and Vice-President, and to adopt a statement of party doctrines or principles called a platform. These conventions are constituted under fixed rules, and are convoked by National committees. The Republican and Democratic conventions consist each of four delegates-at-large from every State, and twice as many district delegates as the State has members in the House of Representatives. As a rule the delegates-at-large are appointed by State party conventions, and the district delegates by district conventions. In the Republican convention a majority vote suffices to nominate candidates; in the Democratic convention the rule is two-thirds.

397. Electoral Tickets.—The next step is to make up the State Electoral tickets. First, State conventions name two Electors for the State called Electors-at-large, or Senatorial Electors. The conventions that name the delegates-at-large to the National conventions may, and often do, name also the candidates for Electors-at-large. Next district Electors are put in nomination, one from a Congressional district, generally by district conventions. The names of the candidates put in nomination by a given party brought together constitute the State

party ticket. No Senator or Representative, or other person holding an office of trust or profit under the United States, can be appointed an Elector.

The two steps that have been described belong wholly to the field of voluntary political action. The Constitution and the laws have nothing whatever to do with them.

398. Choice of Electors.—Congress fixes the day upon which the Electors are chosen. It is the same in all States, Tuesday following the first Monday of November, the day on which members of the House of Representatives are generally elected. Persons who may vote for State officers and for Representatives may also vote for Electors. State officers conduct the election, and the Governor gives the successful candidates their certificates of election. The appointment of the Electors is popularly called the Presidential election. It is so in fact but not in law. In point of law the people do not elect the President and the Vice President, but only Electors who elect them. In point of fact, as we shall soon see, they do both. All that the National authority has done up to this point is to fix the time of the appointment of Electors. Hereafter that authority directs every step in the process.

399. Meeting of the Electors.—On the second Monday of January, following their appointment, the Electors meet at their respective State capitals to vote for President and Vice-President. They name in their ballots the person for whom they vote as President, and in distinct ballots the person for whom they vote as Vice-President. No Elector can vote for persons for both offices from the same State that he himself resides in: one at least of the two candidates must belong to another State. The voting over, the Electors make distinct lists

of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they sign, certify, and seal. Three copies of these lists are made. Two of them they send to Washington addressed to the President of the Senate, one by mail and one by a special messenger. The other copy they deliver to the Judge of the United States District Court for the district in which they meet and vote. Congress by law names the day on which the Electors give their votes, and it must be uniform throughout the Union. The casting of their ballots by the Electors is the formal but not the real Presidential election.

400. Counting the Electoral Votes.—On the second Wednesday of February, the day named by Congress, the Senate and the House of Representatives meet in the hall of the House to witness the counting of the Electoral votes. The President of the Senate presides, the Speaker of the House sitting by his side. He opens the certificates of votes and hands them to tellers appointed by the Houses, who read and count the votes. The President of the Senate declares the result. The person having the greatest number of votes cast for President, if a majority of all, is declared President; the person having the greatest number of votes for Vice-President, if a majority of all, is declared Vice-President.

401. Election of the President by the House.—If no person has received for President the votes of a majority of all the Electors appointed, the House of Representatives must immediately choose the President from the three candidates who have had the most votes for that office. This election is by ballot. The votes are taken by States, the Representatives from a State having one vote. Nevada balances New York, Delaware Pennsylvania. A quorum to conduct the election consists of a member

or members from two-thirds of the States, and a majority of all the States is necessary to a choice. Twice has the House of Representatives chosen the President, Thomas Jefferson in 1801 and John Quincy Adams in1825. Both of these elections were attended by great excitement.

If the House fails to choose a President, when the choice devolves upon that body, by March 4 following, then the Vice-President acts as in the case of death, removal, or resignation of the President.

402. Election of the Vice-President by the Senate.—If no person voted for as Vice-President has a majority of all the Electors appointed, then the Senate shall choose to that office one of the two candidates standing highest on the list of candidates for the Vice-Presidency. A quorum for this purpose consists of two-thirds of the whole number of Senators, and a majority of all the Senators is necessary to a choice.

403. Miscellaneous Provisions.—The Electors appointed from a State are often called a college; the Electors from all the States the Electoral colleges. Most of the States have empowered their colleges to fill vacancies that may occur in their number. In 1887 Congress passed an act to provide for and regulate the counting of votes for President and Vice-President, and the decision of questions arising thereon. This law gives the States jurisdiction over disputed appointments of Electors. It also prescribes the method of proceeding when plural returns are made from any State and in cases where objections are made to a single return.[1]

[1] The method of electing President and Vice-President outlined above, is that prescribed by the Constitution as originally framed, together with the Twelfth Amendment. For the change introduced by this Amendment, see the Amendment in connection with Article II, section 1, clause 3, of the Constitution at first framed.

404. The Electoral System.—When the framers of the Constitution devised the method of election by means of Electoral colleges, they assumed that the Electors would be picked bodies of men, who would vote for the best men for President and Vice-President, regardless of popular feeling and private interest. It may be said that in the case of Washington the plan worked as they expected, but since his second administration it has never done so. No other part of the Constitution has proved so disappointing as the method of electing the President. In 1804 the Constitution was amended to correct evils that had declared themselves in the election of 1800; but the Twelfth Amendment, while accomplishing its immediate purpose, did not prevent the whole plan becoming a miserable failure. The men of 1787 did not foresee the part that politics and political parties would play in American affairs. As we have seen, the President and Vice-President are really named by one of the two great political conventions. The Electors are not chosen to exercise their own best judgment, but to cast their ballots for the party candidates. When once elected, the Electors are not legally bound to vote for these candidates, for the Constitution and laws make no mention of parties and conventions; but they are bound as party men and as men of honor, for they have consented to be elected on this understanding. As the system works, they have no free will whatever, and practically the Electoral colleges are pieces of useless political machinery.

CHAPTER XXXI.

THE PRESIDENT'S QUALIFICATIONS, TERM, AND REMOVAL.

The American Government. Sections 450; 476–482.

405. Qualifications. — The President must be a natural-born citizen of the United States. He must have attained the age of thirty-five years, and have been a resident of the country fourteen years at the time of his election. The Vice-President must have the same qualifications as the President.

406. Length of Term.—The term of office of both the President and the Vice-President is four years, and the two officers are eligible to successive re-elections. It has often been contended that it would be better to give the President a term of six or seven years, and then make him ineligible to a second election.

407. The President's Salary.—This is fixed by Congress. From 1789 to 1873 it was $25,000 a year; since 1873 it has been $50,000. Congress also provides the President the furnished house known as the White House for an official residence. The President's salary can neither be increased nor diminished after he has entered on the duties of his office. The first of these two prohibitions makes it impossible for him to enter into bargains with members of Congress, whereby they shall receive something that they deem desirable, at the same time that his compensation is increased. The second prohibition makes it impossible for Congress to reduce his compensation, and so to make the President its dependent or creature. All changes in the salary must therefore be prospective. Still further, the President cannot, during

his continuance in office, receive any other public emolument than his salary, such as a gift or present from the United States or from any State. The salary of the Vice-President is $12,000.

408. The President's Oath. — Before entering on the duties of his office, the President must take the following oath or affirmation: "I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States." This oath is in general a definition of the President's duties. He is exclusively an executive officer. The occasion on which the President takes this oath is popularly called his inauguration, and is marked by a good deal of parade and ceremony. The custom now is to conduct the inauguration on the East Front of the Capitol at Washington. The Chief Justice administers the oath, and the President delivers an address called his inaugural address. With the exception of the oath, none of these ceremonies are required by the Constitution or the laws, and they might be dispensed with. It is also customary for the Vice-President to take his oath in the Senate Chamber and to deliver a short speech to the Senators.

409. The Vice-President. — The only reason for creating the office of Vice-President was to have a proper officer at hand who could succeed to the Presidency in the case of a vacancy. The Vice-President becomes President when the President is removed, dies, resigns, or is unable to discharge the powers and duties of his office. The President can be removed only by conviction on impeachment. If he resigns he must file his resignation in writing in the office of the Secretary of State. Just what inability to discharge the duties of his office is, has never

been settled. President Garfield performed but one executive act from July 2, 1881, to his death, which occurred September 19 following. It was much discussed at the time whether a case of inability had arisen, but with no practical results. Five Vice-Presidents have become Presidents by succeeding to the office. When the Vice-President becomes President, he succeeds to all the powers, dignities, responsibilities, and duties of the office for the unexpired portion of the term and ceases to be Vice-President. The Constitution provides that the Vice-President shall be the President of the Senate, but this is merely for the purpose of giving dignity and consequence to an officer who, for the most part, would otherwise have nothing to do.

410. The Presidential Succession. — Who shall succeed to the Chief Executive office in case both the President and Vice-President die, resign, are removed, or are unable to perform the duties of the office? The Constitution says that Congress shall by law provide for such a case, declaring what officer shall act as President until the disability be removed or a President be elected. The present law, which dates from 1886, declares that first the Secretary of State shall succeed, then the Secretary of the Treasury in case of his death, removal, etc.; afterwards the Secretary of War, the Attorney-General, the Postmaster-General, the Secretary of the Navy, and the Secretary of the Interior (American Government, p. 267), in this order. No one of these officers, however, can succeed unless he has been confirmed by the Senate and has all the qualifications that are required of the President. If one of them succeeds he fills the unexpired portion of the term the same as the Vice-President. However, a case of the removal, etc., of both the President and the Vice-President has never yet occurred.

CHAPTER XXXII.

THE PRESIDENT'S POWERS AND DUTIES.

The American Government. Sections 483-511.

As is remarked in another place, the oath that the President takes on his inauguration is a general definition of his duties. Still the Constitution declares further that he shall take care that the laws be faithfully executed, and shall commission all officers of the United States. More than this, it describes his duties with more or less detail.

411. **Army and Navy.**—The President is commander-in-chief of the army and navy of the United States, and of the Militia of the States also when they are called into the National service. The effective control of the National forces requires unity of judgment, decision, and responsibility. It is obvious that a congress or a cabinet would be a very poor body to place at the head of an army. The power entrusted to the President is a great one, but he cannot well abuse it so long as Congress alone can declare war, raise and support the army, provide the navy, make rules for the government of the military and naval forces, and provide by law under what conditions the President may call out the militia. The President delegates to chosen officers his authority to command the army and the navy in actual service.

412. **The Pardoning Power.**—Power to try, convict, and pass judgment upon persons charged with crimes and offenses under the laws of the United States is lodged in the courts alone. But courts sometimes commit mis-

takes, and sometimes special circumstances arise that make it proper to exercise clemency towards persons who are undergoing punishment for crime. Again, it may be wise to exercise clemency while the offender is on trial, or even before trial begins. So the President is authorized to grant reprieves and pardons for offenses against the United States, except in cases of impeachment. A reprieve is a temporary suspension of punishment that has been decreed; a pardon is a full release from punishment either before or after it has been decreed. Commonly, however, a pardon comes after conviction.

413. Treaties.—A treaty is a solemn engagement or contract entered into between two or more sovereign or independent states. They relate to such subjects as commerce and trade, the rights of citizens of one country in the other, etc. Treaties also deal with the graver subjects of peace and war. The power to enter into a treaty properly belongs to the executive branch of government, as dispatch, secrecy, and unity of purpose are called for. As it might be dangerous in a republic to lodge the power exclusively in the Executive's hands, it is provided that the President, by and with the advice and consent of the Senate, shall have power to make treaties with foreign states.

414. Mode of Making a Treaty.—Commonly the steps that are taken are the following: First, the treaty is negotiated or agreed upon by the powers. The negotiation is conducted on the part of our Government by the Secretary of State, a minister residing at a foreign capital, or a minister or commissioner appointed for the purpose. The President, acting through the Department of State, directs the general course of the negotiation. Secondly, the treaty, when it has been negotiated, is wholly in the President's hands. If he disapproves

of it, he may throw it aside altogether. If he approves it, or is in doubt whether he should approve it or not, he submits it to the Senate for its advice. Thirdly, the treaty is now wholly in the Senate's hands, except that the President may at any time that he chooses withdraw it from the Senate's further consideration. The Senate may approve or disapprove the treaty as a whole, it may propose amendments, or it may refuse to act at all. If the Senate amends the treaty it is practically a new one, and both the President and the foreign power must assent to it in its new form. The fourth step is an exchange of ratifications. This is a formal act by which the powers concerned signify that all the steps required to make the treaty binding have been taken. Finally, the President publishes the treaty and by proclamation declares it to be a part of the law of the land. The Senate considers treaties in executive session, and its advice and consent in most cases is merely approval or disapproval of what the President has done. A two-thirds vote of the Senate is necessary for the ratification of a treaty.

415. Appointment of Officers. — The President nominates, and by and with the advice and consent of the Senate, appoints ambassadors, other public ministers, and consuls, judges of the Supreme Court, and all other officers of the United States that are provided for by law, unless the Constitution itself provides for them. Congress may, however, place the appointment of such inferior officers as it thinks proper in the President alone, in the heads of Departments, and in the courts. The President appoints his private secretary and clerks. The appointment of a somewhat larger number of officers is placed in the courts, while the appointment of a very great number is vested in the heads of the Executive

Departments. Thus, the appointment of all postmasters whose salary is less than $1,000 is placed in the hands of the Postmaster-General. When all these exceptions have been made, a large number of appointments still remains to be made by the President and the Senate.

416. Mode of Appointment.—The first step to be taken in filling an office is for the President to make a nomination in writing to the Senate, specifying the office and naming the officer. The Senate refers the nomination to its proper committee, as of a judge to the Committee on the Judiciary, or of a foreign minister or consul to the Committee on Foreign Relations. The committee investigates the subject and reports the nomination back to the Senate, either with or without a recommendation that the nomination be confirmed. The Senate then grants or withholds its confirmation, as it is called. The Senate acts in such a case, as in the case of treaties, in executive session. If the Senate refuses to confirm, the President makes a second nomination, and so on until the place is filled. The Senate sometimes refuses to confirm a nomination if the Senators from the State where the office is, or one of them, objects to it. This is especially the case when the Senator or Senators belong to the political party that for the time has a majority of the body. This custom, which is wholly without support of law, is known as the courtesy of the Senate.

417. Ambassadors and Other Public Ministers.—Public ministers are representatives that one state or nation sends to another to look after its interests. Ambassadors are the highest rank of ministers. The other grades are envoys extraordinary or ministers plenipotentiary, ministers-resident, commissioners, and *chargés d'affaires*. The United States now have ambassadors at the capitals of ten or more important countries, and represent-

atives of inferior grade at many other capitals. The salaries paid these representatives, who are collectively called the diplomatic service, range from $5,000 to $17,500. The duties and rights of ministers are defined by the Law of Nations, called also International Law.

418. Receiving Ministers.—It is the duty of the President to receive ambassadors and other public ministers sent by foreign powers to our Government. This ceremony involves the recognition of the power from which the minister comes, and also his own recognition as a man acceptable to the United States. The President can refuse to receive a minister because he is personally objectionable, and can dismiss him for the same reason.

419. Consuls.—The duties of consuls are fixed by treaties and by the municipal law of the nation appointing them. In general it may be said that they look after the commercial interests of the country at large, and assist their countrymen in obtaining commercial rights and privileges. They also perform many other duties. They are business agents and do not rank as ministers. Sometimes, however, diplomatic duties are entrusted to them. A consul-general exercises supervision over the consuls of his country within the country to which he is sent, or within some designated portion of it. The President appoints about 60 consuls-general and about 250 consuls. They receive salaries, ranging from $2000 to $12,000 a year.

420. Military and Naval Officers.—Unless otherwise provided by law, military and naval officers are appointed in the same manner as civil officers. Still the President, as commander-in-chief, has exclusive control of the commands to which they are assigned. He assigns officers to their places of duty, and removes them for what he deems sufficient reasons. Since 1866 the law

has been that no officer in the military or naval service shall, in time of peace, be dismissed from service except upon, and in pursuance of, the sentence of a court-martial, or in commutation thereof.

421. Removal from Office.—The President has the power of removal as well as of appointment. When the Senate is in session a removal is made in the following way: The President sends to the Senate a nomination, just as though the office were not already filled. If the Senate confirms this nomination, the President then commissions the officer and he enters upon the duties of his office. The former incumbent holds the office until the last of these steps has been taken. If the Senate refuses to confirm, the President must send in a second nomination or allow the incumbent to remain undisturbed. In a recess of the Senate a removal is made in a somewhat simpler way. The President now appoints directly, and at the same time gives the appointee his commission, who enters upon his office at once. When the Senate meets at its next session, the President must send to that body, for its action, the name of the appointee. If the Senate confirms the nomination, that is the end of the matter. If it refuses to confirm, the President must then make a second nomination. In either case the removal of the former incumbent is final and absolute.

422. Vacancies.—When a vacancy in any office occurs while the Senate is in session, the President makes a nomination, and matters proceed just as explained in the last paragraph. When the vacancy occurs in a recess of the Senate, the President appoints and commissions the officer, and the Senate acts on the nomination at its next session just as in the case of a removal made in the recess.

423. The Civil Service.—The persons who serve the Government in civil or non-military capacities are collectively called the civil service. They are divided into two classes called officers and employés. The two classes are not separated by any consistent rule or practice. Officers, who are much inferior in numbers to employés, are appointed and removed. Employés are employed and discharged; not appointed and removed. Laborers in the navy yards, arsenals, and the like are employés; so are many persons in continued service at custom houses and in other offices as well as many clerks. In 1893 the civil service consisted of about 200,000 persons. Of these 69,000 were postmasters and 40,000 others served in the Post-office Department. Twenty-two thousand were workmen. The others were distributed among the other Departments of the Government.

424. Civil Service Reform.—Until a short time ago it was the custom for the President and others who were clothed with the appointing power to make appointments and removals of officers for political reasons. The same practice prevailed also in respect to employés. On a change of the administration, and especially when it involved a change of party, great numbers of officers and employés would be removed or discharged to make room for others. A Democratic administration was expected to turn out the Republicans, and a Republican administration to turn out the Democrats. This was called the spoils system. Soon after the Civil War the civil service began to attract the attention of the country. Men saw that the spoils system was accompanied by great abuses and corruption. In 1882 an act was passed under which the service has been materially reformed. This act does not apply to any office where the joint action of the President and

Senate is required to make an appointment. It provides that in the Departments at Washington, and in custom-houses and post-offices where as many as fifty clerks are employed, appointments shall be made by reason of merit or fitness. Competitive examinations are held, and when a new appointment is to be made in any Department or office, as to fill a vacancy, it must be filled from the four persons standing highest on the list of those who have passed the examinations. This is called the eligible list. Every State or Territory is entitled to its fair share of the appointments, and no person can be finally appointed until he has served a probation of six months. This is called the merit system. The President, in the exercise of his discretion as the executive head of the Government, has extended this system to many classes of officers and employés that the law does not in terms include. Mention may be made of the Government Printing Office and of the Postal Railway Service.

425. The President's Message.—The President is required to give Congress information of the state of the Union from time to time, and to recommend to its consideration such measures as, in his judgment, are necessary and expedient for the good of the country. At the opening of each session of Congress, he sends to the Houses a written communication that is styled a message, conveying such information and making such recommendations. He also sends in from time to time special messages, conveying special information or recommendations as occasion requires. The communications in which the President makes nominations, transmits treaties to the Senate, and assigns his reasons for refusing to sign bills are also known as messages. The heads of the several Departments make

annual reports to the President, and these the President transmits at the same time that he sends in his annual message. Collectively they are called the Executive Documents.

426. Special Sessions of Congress.— The President, on extraordinary occasions, may call the Houses of Congress together in special session. In such cases he transmits a message explaining why he does so, and recommending such action as he thinks necessary to be taken. He may also convene either House of Congress alone, and it is the custom for the President, just before retiring from office, to issue a proclamation calling the Senate together immediately following the inauguration of his successor. This gives the new President an opportunity to nominate his Cabinet and such other officers as he thinks important to appoint at that time. No President has ever found it necessary to call the House of Representatives by itself.

CHAPTER XXXIII.

THE EXECUTIVE DEPARTMENTS.

The American Government. Sections 511–524.

The executive business of the Government is transacted through the nine Executive Departments, that Congress has by law created. The President's office in the White House exists only for his personal convenience and is not an office of record. All the public records are kept in the Departments through which the business is transacted. The Departments are established in Government buildings in Washington. The names of the Departments, with the dates of their establishment, are as follows: State, Treasury, War, Justice, formerly called the Office of the Attorney General, and Post-Office, 1789; Navy, 1798; Interior, 1849; Agriculture, 1889; and Commerce and Labor, 1903. The heads of these Departments all receive the same salary, $12,000 a year.

427. **Department of State.**—At the head of this Department stands the Secretary of State, who is considered the head of the Cabinet. There are also three Assistant Secretaries of State. Under the direction of the President, the Secretary conducts the foreign and diplomatic business of the country. The originals of all treaties, laws, and foreign correspondence are in his custody. He also has in his possession the seal of the United States, and affixes it to public documents that require it, and also authenticates the President's proclamations with his signature. The business of the Department is conducted through various bureaus, such as the Bureau

of Indexes and Archives, the Diplomatic and the Consular Bureaus, etc.

428. Department of the Treasury.—The Secretary of the Treasury proposes plans for the public revenues and credit, prescribes the manner of keeping the public accounts, superintends the collection of the revenue, issues warrants for the payment of moneys appropriated by Congress, and makes an annual report of the state of the finances. The several auditors of the Department examine and settle the accounts of the different branches of the public service. The Comptroller supervises the work of the auditors. The Register signs all bonds, notes, silver and gold certificates, etc., of the United States, and keeps a record of them. The Treasurer has the moneys of the Government in his custody, receiving and disbursing them. The Comptroller of the Currency looks after the National Banks, and the Commissioner of Internal Revenue after that part of the public service. There are also directors of the Mint and of the Bureau of Engraving and Printing. The head of the Department is assisted by three Assistant Secretaries.

429. Department of War.—The Secretary of War directs the military affairs of the Government. He superintends the purchase of military supplies, directs army transportation and the distribution of stores, has the oversight of the Military Academy at West Point, and looks after the supply of arms and munitions of war. The Chief of Staff is the Secretary's professional adviser, and supervises the ten bureaus of the Department, namely, those of the Adjutant, Inspector, Judge-Advocate, Quartermaster, Commissary, Paymaster, and Surgeon Generals, the Chief of Engineers, the Chief of Ordnance, and the Chief Signal Officer. There is also an Assistant Secretary of War.

430. Department of Justice.—The head of this Department is the Attorney-General, who is the responsible adviser of the President and the heads of the other Executive Departments on matters of law. He and his assistants look after the interests of the Government in the courts, prosecuting or defending law suits to which the United States are a party, and passing upon the titles of all lands purchased by the Government for forts or public buildings. There are in the Department a Solicitor General, several Assistant Attorney-Generals, a Solicitor of the Treasury, a Solicitor of Internal Revenue, a Solicitor for the Department of State, and many other assistants. The District Attorneys in the different judicial districts are also under the direction of the Attorney-General.

431. Post-Office Department. — Subject to the President, the Postmaster-General is the head of the vast postal service of the country. He has a larger number of subordinates than all the other heads of Departments together. The First Assistant Postmaster-General has general charge of post-offices and postmasters and their appointment and instruction, of bonds and commissions, salaries and allowances, and the city free delivery system. The Second Assistant has charge of the transportation of mails, including contracts, inspection, railway adjustments, mail equipment, railway mail service, and foreign mails. The Third Assistant has general charge of the finances of the department, including accounts and drafts, postage stamps and stamped envelopes, registered letters, and classification of mail matter. The Fourth Assistant has general charge of the rural free delivery system, post-office supplies (blanks, stationery, etc.), dead letters, and the making of post-route maps.

432. Department of the Navy.—The Secretary of the Navy stands to this Department in the same relation that the Secretary of War stands to the War Department. There is one Assistant Secretary. The several bureaus of the department are: Yards and Docks, Equipment, Navigation, Ordnance, Medicine and Surgery, Supplies and Accounts, Steam Engineering, Construction and Repair. The Military Academy at Annapolis is also subject to the Secretary of the Navy.

433. Department of the Interior.—The business intrusted to the Department of the Interior is more miscellaneous and diversified in character than that intrusted to any other Department. The Secretary has general oversight of the Patent Office, General Land Office, Bureau of Pensions, Indian affairs, and the Office of Education. The most extensive of these subordinate offices is that of Pensions, which disburses $140,000,000 annually. The Commissioner of Education collects facts and statistics in regard to education and publishes them in an annual report. There are two Assistant Secretaries of the Interior.

434. Department of Agriculture.—It is the duty of the Secretary of Agriculture to diffuse among the people useful information on the subject of agriculture, in the most general and comprehensive sense of that term. He has the supervision of all quarantine regulations for the detention and examination of cattle exported and imported that may be subject to contagious diseases. The Weather Bureau, over which "Old Probabilities" presides, is in this Department. There is one Assistant Secretary.

434a. Department of Commerce and Labor.—It is the duty of this Department to promote "the foreign and domestic commerce, the mining, manufacturing,

shipping, and fishery industries, the labor interests, and the transportation facilities." This it does largely by the publication of statistics and other information. It also enforces the laws for the protection and regulation of commerce. Among the Bureaus included in this Department are those of Statistics, Manufactures, Corporations, Labor, Immigration, and Navigation, the Lighthouse Board, the Census Office, and the Commission of Fish and Fisheries. At the head of the Department is the Secretary of Commerce and Labor; there is also an Assistant Secretary.

435. The Cabinet.—The heads of the nine Departments constitute what is called the Cabinet. This name, however, is a popular and not a legal one. The law creates the Departments and defines the duties of their heads. The Constitution empowers the President to call for the opinions in writing of these officers on matters relating to their several duties. The heads of Departments are responsible to the country so far as their duties are definedby law; for the rest they are responsible to the President. They meet frequently with the President to discuss public business. The President defers more or less, as he pleases, to the views that they offer, as he does to the views that they expressed singly in writing or in conversation, but the Cabinet as such has no legal existence and is not responsible. No official record is made of its meetings. The Constitution makes the President alone accountable for the faithful execution of the laws. Heads of Departments hold their offices subject to the President's will; but he holds, with exceptions given, four years.[1]

[1] See the Cabinet and the President's responsibility. See *The American Government*, paragraphs 522, 523. 524, and *Note*.

CHAPTER XXXIV.

THE JUDICIAL DEPARTMENT.

The American Government. Sections 525-577.

The third of the independent branches of the Government of the United States created by the Constitution is the Judiciary. Its functions and organization will now be described.

436. Judicial Power Defined.—It is the business of the judiciary to interpret the law and apply it to the ordinary affairs of life. The judiciary does not make the law, but it declares what is law and what is not. This it does in the trial of cases, popularly called lawsuits. A case is some subject of controversy on which the judicial power can act when it has been submitted in the manner prescribed by law. It is particularly to be noted that the judicial power is strictly limited to the trial and determination of cases. Some cases involve questions of law, some questions of fact, some questions of both fact and law, and all come within the scope of the judicial power. A court is a particular organization of judicial power for the trial and determination of cases at law.

437. Vesting the Judicial Power.—The judicial power of the United States is vested in one Supreme Court and in such inferior courts as Congress sees fit to ordain and establish. The Constitution thus creates the Supreme Court, and it also provides that its head shall be the Chief Justice of the United States. At the present time the inferior courts are the District Court, the Circuit Court, the Circuit Court of Appeals, the

Court of Claims, and the Courts of the District of Columbia and the Territories.

438. Extent of the Judicial Power.—The judicial power is co-extensive with the sphere of the National Government. It embraces all cases that may arise under the Constitution and the laws of the United States, and the treaties entered into with foreign nations. It includes all cases affecting ambassadors, other public ministers, and consuls; all cases of admiralty and maritime jurisprudence; cases to which the United States are a party; cases that arise between two or more States, or between a State and foreign states; cases between citizens of different States, and cases between citizens of the same State who claim lands granted by different States, and cases between citizens of a State and foreign states, citizens, or subjects.

439. Kinds of Jurisdiction.—A court has jurisdiction of a case or suit at law when it may try it, or take some particular action with regard to it. There are several kinds of jurisdiction. A court has original jurisdiction of a case when the case may be brought or begun in that court. It has appellate jurisdiction when it may re-hear or re-examine a case that has been decided or has been begun in some inferior court. The methods by which this is done are called appeal and writ of error. An appeal brings up the whole question, both law and fact, for re-examination; a writ of error, the law only. A court has exclusive jurisdiction of a case when it is the only court that can try it or can dispose of it in some particular manner. Two or more courts have concurrent jurisdiction of a case when either one may try it, provided the case comes properly before it.

440. The District Court.—Congress has created seventy-nine Judicial Districts, in each one of which a Dis-

trict Court is organized. There is at least one district in every State, and in the most populous States there are two or more. A few of the District judges preside over two districts; but as a rule each district has its own judge, besides a District Attorney, who is the local law officer of the Government, a Clerk who keeps the records of the court and issues legal papers under its seal, and a Marshal who is the executive officer of the court. A District court must hold at least two terms every year. It has a limited range of jurisdiction in civil cases, and especially in admiralty and maritime jurisprudence; that is, in matters relating to shipping and navigation. It also has jurisdiction of many crimes and offenses committed in the district.

441. The Circuit Court.—The seventy-nine districts are grouped in nine Circuits. The first circuit contains four States and four districts, the second three States and six districts, and so on. One of the justices of the Supreme Court is assigned to each circuit, and is called the Circuit Justice. There are also two or more Circuit judges in each of the nine circuits. The Circuit court sits from time to time in every district that the circuit contains. It may be held by the Circuit Justice, by one of the Circuit judges, or by the District judge of the district where the court is for the time sitting, or by any two of these sitting together. The district attorneys, clerks, and marshals mentioned before serve these courts also. The Circuit court has original jurisdiction in civil cases where the amount in controversy is $2,000, not counting costs, in copyright and patent cases, and many others. It has original jurisdiction in criminal cases, and in capital cases an exclusive one. Once it was also a Court of Appeals from the District court, but its appellate jurisdiction has been abolished.

442. The Circuit Court of Appeals.—In every circuit there is also a Circuit Court of Appeals. It consists of three judges, of whom two constitute a quorum. The Circuit Justice, the Circuit judges, and the District judges of the circuit are competent to sit in this court. The last, however, can sit only for the purpose of making a quorum in the absence of the Circuit Justice or of one or both of the Circuit judges. The law designates the places where these courts shall be held. First circuit, Boston; second, New York; third, Philadelphia; fourth, Richmond, Virginia; fifth, New Orleans; sixth, Cincinnati; seventh, Chicago; eighth, St. Louis, and ninth, San Francisco. The Circuit Court of Appeals can review many decisions made by the Districts and Circuit courts. In patent, revenue, criminal, and admiralty cases its decisions are final. These courts are exclusively courts of appeals, and they were created expressly to relieve the Supreme Court of a part of its business.

443. The Court of Claims.—The Government of the United States carries on vast business operations, and, as is natural, points of dispute are constantly arising. Formerly a person having a claim against the Government that the Executive Departments could not or would not pay, had no redress but to go to Congress for relief. This was unsatisfactory both to claimants and to the Government. To meet this difficulty, the Court of Claims was created and was given jurisdiction over certain classes of claims against the Government. The method of procedure is for the claimant to enter a suit in court, which is regularly tried and determined. If judgment is rendered against the Government, Congress appropriates money to pay it. This court consists of a Chief Justice and four Associate Justices, and sits only in Washington. Congress has also vested a limited

jurisdiction in respect to claims in the District and Circuit courts also.

444. The Federal District and the Territories.—Congress has established special courts for the District of Columbia and the Territories. The Supreme Court of the District consists of a Chief Justice and five Associate Justices, any one of whom may hold a court with power similar to that exercised by the District judges in the States. The Territorial judicial system is similar to this, but the judges are fewer in number.

445. The Supreme Court.—The Supreme Court consists of the Chief Justice of the United States and eight Associate Justices. It holds one regular term each year at Washington, beginning the second Monday of October. This court has original jurisdiction in all cases relating to ambassadors and other public ministers and consuls, and those to which a State is a party. It has appellate jurisdiction, both as to law and fact, in all cases originating in the inferior courts, save such as Congress by law shall except. Nearly all the cases that the Supreme Court passes upon are appellate cases. Appeals may be made to it, and writs of error lie to it, from the District and Circuit courts, from the Court of Appeals, and from the Supreme Courts of the Federal District and the Territories.

446. Appointment of Judges.—The National judges are appointed by the President by and with the advice and consent of the Senate. The appointments are for good behavior, by which expression official behavior is meant. Nothing is more necessary to a judicial system than the independence of the judges. If they were elected by the popular vote, they might court the popular favor to secure an election. If they served for fixed periods, they might court the Senate and President to

secure re-appointment. The courts of the Federal District and of the Territories do not come within the Constitutional provisions. However, Congress has made the tenure of the first good behavior, and of the second a term of four years.

447. Pay of the Judges.—The salary of a judge can not be diminished while he continues in office, but it may be increased. If Congress could reduce the judge's salary after he had entered upon his term, it might control his action and make him dependent upon its will. The salary of the Chief Justice is $13,000; of the Associate Justices, $12,500; of the Circuit Judges, $7,000; and of District Judges, $6,000. Any judge who has held his commission ten years and has attained to the age of seventy, may resign his office and continue to draw his salary during the remainder of his life.

448. Concurrent Jurisdiction of National and State Courts.—The Constitution gives the Supreme Court an original jurisdiction in cases affecting public ministers and consuls, and cases to which a State may be a party. Congress has gone further and declared the jurisdiction of the National courts in certain cases to be an exclusive one. Patent and admiralty cases, for example, are of this class. Outside of this exclusive jurisdiction, Congress has given the State courts a civil jurisdiction concurrent with that of the National courts. Still more, some criminal offenses under the National laws may be prosecuted in the State courts, as those arising under the postal laws.

449. Appeals from State Courts.—The Constitution, laws, and treaties of the United States are the supreme law of the land. If the constitution or the laws of a State conflict in any way with this supreme law, such constitution or laws, so far as the confliction extends,

are null and void. Moreover, the power to decide what is, and what is not, a confliction with the National authority rests with the National judiciary. Hence, any case arising in the courts of a State that involves the National authority may be appealed to the National courts. Such cases are said to involve Federal questions. To this extent, therefore, the courts of the United States are the final and authoritative interpreters of the constitutions and laws of the States.

450. Rules Regulating Trials.—A jury system like that found in the States is a part of the National judiciary. All crimes, save in cases of impeachment, must be tried by an impartial jury of the State and judicial district where they have been committed. Crimes committed in the Federal District or in a Territory must be tried in the District or Territory. Crimes committed on the sea are tried in the district in which the accused is arrested, or into which he is first brought when the ship returns to the United States. No person can be put on trial for a capital or infamous crime until he has first been indicted by a grand jury; in such case the trial must be a speedy and public one, and the accused must be informed of the accusation made against him. He shall have the benefit of the compulsory power of the court to compel the attendance of witnesses, and shall also have the assistance of a lawyer for his defense. Excessive bail can not be required, or excessive fines be imposed, or cruel or unnatural punishments be inflicted. No person who has once been tried for an offense and found innocent, can be put on trial for that offense the second time. In a criminal case no man can be compelled to testify against himself, nor can any person be deprived of life, liberty, or property until he has been adjudged guilty according to the common course of the

law. In any civil suit at common law where the amount in controversy is more than twenty dollars, the right of trial by jury is also preserved. Rules like these will be found in the jurisprudence of the several States. These rules, however, relate exclusively to the National tribunals. The Fourteenth Amendment declares that no State shall deprive any person of life, liberty, or property without due process of law.

451. Military Courts.—Cases arising in the military and naval service are tried in special courts called courts-martial. This is true of the militia also when they are employed in the public service in time of war or public danger. In all such cases as these the rule in regard to an indictment by a grand jury has no application.

452. Treason.—Treason against the United States is either making war against them, or siding with their enemies, rendering them aid and comfort. No person can be convicted of this crime, which is considered the greatest of all crimes, except on the testimony of two witnesses to the same offense, or on his own confession of guilt in open court. Congress has enacted two modes of punishment for treason at the discretion of the judge trying the case. The traitor shall suffer death; or he shall be imprisoned at hard labor for not less than five years, be fined not less than $10,000, and be pronounced incapable of holding any office under the United States.

CHAPTER XXXV.

NEW STATES AND THE TERRITORIAL SYSTEM.

The American Government. Sections 584–597.

The Territorial System of the United States has played a very important part in their history. It is proposed in this chapter to show how it originated, and to describe its principal features.

453. **The Original Public Domain.**—At the time of the Revolution seven of the thirteen States claimed the wild lands lying west of the Alleghany Mountains and extending to the Mississippi River and the Northern Lakes. These were then National boundaries. In time these States yielded their claims. When the Constitution was framed in 1787, the country northwest of the Ohio River had already come into possession of the Old Congress. The Southern cessions were made later. In general, the cessions to the Nation included both soil and jurisdiction—the ownership of the land and the right to govern the territory. The Northwestern cessions constituted the first Public Domain of the United States; that is, a territory belonging to the Nation in common. The Constitution gave Congress the power to dispose of the National territory, and to make all needful rules and regulations for its government. Before this, however, Congress had established a government over the existing domain, which was styled the Northwest Territory.

454. **Annexations.**—Besides the islands acquired in 1898 and after, seven annexations of territory have been made to the United States: Louisiana purchase,

1803; Florida, 1819; Texas 1845; Oregon, 1846; the two Mexican annexations, 1848 and 1853, and Alaska, 1867. These annexations, with a single exception, were additions to the public domain and became at once subject to the control of Congress. This exception was Texas, which had been an independent power and was admitted to the Union as a State at once without passing through the Territorial probation. Subsequently Texas sold that part of her dominion which now forms the eastern part of the Territory of New Mexico to the United States.

455. Provision for New States.—The claimant States made their cessions of Western territory on the condition that, as rapidly as it became ready, such territory should be divided into new States to be admitted to the Union on an equality with the old ones. So a provision was inserted in the Constitution that authorized Congress to admit new States to the Union. But this was not all; some controversies had already arisen concerning the formation of new States out of old ones. So it was provided that no new State should be formed within the jurisdiction of any State, nor should any new State be formed by uniting two or more States, without the consent of the Legislatures concerned as well as of Congress.

456. Territories of the United States.—In a broad sense the whole dominion of the United States is their territory, States and Territories alike. But in common usage the term territory is limited to so much of the whole dominion as has not been formed into States. Still further, as thus limited the word is employed in two senses. An organized Territory is a part of the dominion having certain boundaries and a fully developed Territorial Government. Arizona, New Mexico, and Hawaii are now the only Territories of this class. An unorganized

Territory either has no government at all, or has a very rudimentary one carried on by officers sent from Washington. Thus civil government is administered in Alaska, which is an unorganized Territory, by a Governor and other officers appointed by the President and Senate.

457. Government of an Organized Territory.—Such a government is set up by Congress. The Governor, Secretary, and Territorial Judges are appointed by the President for four years, and are paid from the National Treasury. The Legislature consists of a house of representatives and a council, the members of which are elected by the qualified voters of the territory. The Legislature legislates on subjects of local concern, subject to the Constitution and laws of the United States. For example, it may establish counties and townships and local self-government for the people. It may also establish a Territorial system of schools. The Governor exercises powers similar to those exercised by the Governor of a State, while the Secretary performs duties similar to those performed by a State Secretary of State. There are also a District Attorney and a Marshal appointed by the President. A Territory can not be represented in Congress or participate in the election of President and Vice-President. Still an organized Territory is permitted to send a delegate elected by the people to the House of Representatives, who may speak but not vote. It will be seen that the status of a Territory is in all respects inferior to that of a State. A Territory is an inchoate State.

458. Admission of New States.—This subject has been committed wholly to the discretion of Congress. Congress makes the boundaries of the State, fixes the conditions of admission, gives the State its name and

determines the time of admission. Congress settles some of the details in the act creating the Territory, and still others in a law providing for its admission called an Enabling Act. The principal steps to be taken are the following: First, the people of the Territory elect the members of a convention to frame a State constitution. Secondly, the convention thus elected performs the duty duly committed to it. Thirdly, the constitution is submitted to the people for their approval. Fourthly, Representatives and Senators are elected to represent the new State in Congress. Fifthly, comes the formal act of admission, which is sometimes performed by the President, who issues a proclamation to that effect in compliance with a law previously passed, and sometimes is performed by Congress passing an act called an act of admission.

459. States Admitted.—Thirty-three new States have been admitted to the Union. Vermont, Maine, West Virginia, and Kentucky were formed from old States and were never Territories. The facts in regard to Texas have been stated already. The other States, twenty-eight in number, have been formed from the public domain; and, save California alone, have passed through the Territorial probation.

460. Dependencies.—After the Spanish-American war of 1898 a modified form of Territorial government was developed for the foreign dependencies of the United States. Porto Rico and the Philippines each have a legislature, of which one branch is elected by popular vote, and they are represented at Washington by "resident commissioners," who act much like Territorial delegates. In each of these dependencies the local subdivisions are given large powers of local self-government.

461. The Public Lands.—Beginning in Southeastern Ohio, in 1786, the Government has caused the public lands to be surveyed according to a practically uniform system. They are first cut up into townships six miles square, and then these are subdivided into sections of 640 acres, which again are divided into lots of 160, 80, and 40 acres. The sections are now numbered, back and forth, in the following manner:

6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

Such a township as this is called a Congressional township. As a rule, the States have based their divisions of counties and townships on the Government surveys, and it is this fact that gives the maps of the Western States such a checker-board appearance. In general Congress has followed a very liberal policy in respect to the public lands, selling them at low prices, giving them away as bounties to soldiers and to settlers under the homestead law, and granting them to States and railroads and other corporations to stimulate education and public improvements.

462. School Lands.—Beginning with Ohio, admitted to the Union in 1803, and continuing to Wisconsin, ad-

mitted in 1848, Congress gave section No. 16 in every Congressional township to the people of the township for the use of common schools. Beginning with California, in 1850, and continuing to the present, it has given sections 16 and 36 in every township for that purpose. Congress has also given every public-land State, or State formed out of the domain, two townships of land for the support of a State university, and some of them more than two. It has also given lands for agricultural colleges and normal schools, and for other educational purposes.

463. New States.—The following table contains the names of the new States, and the dates of their admission to the Union:

Vermont, March 4, 1791.
Kentucky, June 1, 1792.
Tennessee, June 1, 1796.
Ohio, February 19, 1803.
Louisiana, April 8, 1812.
Indiana, December 11, 1816.
Mississippi, December 10, 1817.
Illinois, December 3, 1818.
Alabama, December 14, 1819.
Maine, March 15, 1820.
Missouri, August 10, 1821.
Arkansas, June 15, 1836.
Michigan, January 26, 1837.
Florida, March 3, 1845.
Texas, December 29, 1845.
Iowa, December 28, 1846.
Wisconsin, May 29, 1848.
California, September 9, 1850.
Minnesota, May 11, 1858.
Oregon, February 14, 1859.
Kansas, January 29, 1861.
West Virginia, June 19, 1863.
Nevada, October 31, 1864.
Nebraska, March 1, 1867.
Colorado, August 1, 1876.
North Dakota, Nov. 2, 1889.
South Dakota, Nov. 2, 1889.
Montana, November 8, 1889.
Washington, Nov. 11, 1889.
Idaho, July 3, 1890.
Wyoming, July 10, 1891.
Utah, January 4, 1896.
Oklahoma, November 16, 1907.

CHAPTER XXXVI.

RELATIONS OF THE STATES AND THE UNION.

The American Government. Sections 419–445; 578–583; 598–603; 608–620; 623–631; 644–654; 773–782.

Part II of this work describes the government of a single State. The preceding chapter of this Third Part describe the Government of the Union in its general features. It is very obvious that either one of these governments, by itself, would be very imperfect. It is equally obvious that they supplement each other. Each one is essential to the other and to society, and neither one is more essential than the other. The two together make up one system of government. The governments of the States are part of the Government of the Union, and the Government of the Union is a part of the governments of the States. The citizen is subject to two jurisdictions, one State and one National. Both of these jurisdictions have been created by the American people, and each one is exclusive and independent within its sphere. In other words, the United States are a federal state, and their Government is a federal government. Moreover, experience shows that such governments are complicated and delicate, and that they will not work well unless the two parts, local and general, are well adapted each to each like the parts of a machine.

464. **The State Sphere.**—The sphere of the State is well marked off. Matters of local and State concern are committed to its exclusive authority. Within its sphere,

the State is perfectly free to do what it pleases, taking good care not to infringe upon the sphere of the Union. It is the great business of the State government to preserve the peace and good order of society within its borders. It defines civil and political rights; defines and punishes crime; protects the rights of property, of person, and of life; regulates marriage and divorce; provides schools and education for the people, and does a hundred other things that it deems necessary to promote the physical, intellectual, and moral well-being of the people.

465. The National Sphere.—This is equally well defined. Matters of general, common, or National interest are committed to the Union. Here are the powers to levy taxes and borrow money for National purposes; to regulate foreign commerce; to conduct war; to carry on the post-office; to manage foreign relations, and to exercise the many other powers that are delegated by the National Constitution. It will be seen that these are matters in which the whole American people are interested. Within its sphere, the Nation is just as free and unlimited as the State is within the State's sphere.

466. The State and the Union.—Neither one of these jurisdictions is, strictly speaking, limited to matters purely local or purely national. The State does more than merely to look after local interests. The Union does more than merely to see to National affairs. Either authority does some things that, at first thought, might seem to belong exclusively to the other. In this way, great strength is imparted to the whole system, and it is made to do its work more thoroughly. This a series of paragraphs will show.

467. National Functions of the States.—The State participates directly in carrying on the Government of

the Union. It defines the qualifications of electors, establishes Congressional districts, conducts the elections of Representatives, elects members of the United States Senate, and appoints Presidential Electors. All these things are purely voluntary. The States cannot be compelled to do them, but if they should refuse or neglect to do them the whole National system would fall into ruins. But, more than this, the Union employs the State militia, and imposes duties upon the governors and judges of the States.

468. Prohibitions Laid on States.—The successful working of the National system makes it necessary that certain prohibitions shall be laid on the States. No State can enter into any treaty, alliance, or federation; coin money, issue paper money, make anything but gold and silver a tender in payment of debts, pass any law interfering with contracts, or grant any title of nobility. No State, without the consent of Congress, can levy duties or imposts on imports and exports, beyond what is necessary to pay the cost of its inspection service. No State can, without the consent of Congress, lay any tonnage tax on ships, keep troops or ships of war in time of peace, or enter into any compact or agreement with another State or a foreign power. No State can engage in war, unless it is actually invaded or in immediate danger of invasion.

469. Duties of State to State.—If the National System is to work smoothly, it is obvious that a good understanding among the States is necessary. The Constitution accordingly lays various commands upon the States in respect to their relations one to another. The acts, records, and judicial processes of any State are respected by every other State, so far as they can have any application. For example, a marriage contracted or a

divorce granted in one State is a marriage or a divorce in every other State. Citizens of one State passing into another State are entitled to all the rights and privileges that the citizens of such State enjoy. If a person who is charged with any crime in one State flees from justice and is found in another State, it is the duty of the Governor of the State to which he has fled to surrender him on the demand of the Governor of the State from which he has fled, that he may be brought to trial and, if guilty, to punishment.

470. Privileges and Immunities of Citizens.—Section one of Amendment XIV. declares all persons born and naturalized in the United States and subject to their jurisdiction, to be citizens of the United States and of the State wherein they reside. It contains also the following declarations: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Union owes several important duties to the State.

471. Republican Form of Government.—The Union guarantees to every State a republican form of government. If a non-republican government should be established in any State by revolution or otherwise, it would be the duty of the Union to interfere and see that republican government be re-established. Power to decide in such cases what a republican form of government is, belongs to Congress.

472. Invasion and Domestic Violence.—The Union must also protect the States against invasion, and in emergencies against domestic violence. These duties are

the more necessary because the Constitution denies to the States the right to keep troops and ships of war in time of peace. If any State is invaded it is the duty of the President to call out the National forces to repel the invasion. In the first instance it is the duty of the State authority to suppress domestic violence within its borders, but if such authority in any case thinks the assistance of the United States to be necessary or advisable, it has the right to call for such assistance. The Legislature, if it be in session, and otherwise the Governor, makes the call. This call is addressed to the President, who takes such steps as he thinks necessary to accomplish the object.

473. The National Authority and the Public Peace.—There are, however, certain emergencies in which the President can act directly to suppress domestic violence. When such violence interferes with the operations of the National Government, he need not wait for the State Legislature or Governor to call for assistance, but is in duty bound to act at once to protect the operations of the Government and so to restore the public peace. Thus, when the United States mails and inter-State commerce were interrupted in Chicago in 1894, President Cleveland ordered the National forces to protect the mails and the railroads.

474. Supremacy of the Union.—The Constitution, laws, and treaties of the United States are the supreme law of the land. They supersede State constitutions and laws whenever these constitutions and laws encroach upon the supreme law. To secure this end, the judges of the State courts, in interpreting and declaring the law, must side with the United States, rather than with the State, in all cases of confliction. To secure this supremacy the more completely, Senators and Representatives

of the United States, members of the State Legislatures and all executive and judicial officers, both of the United States and of the States, must take an oath or affirmation to support the Constitution of the United States. But no religious faith, opinion, or rite can be made a qualification for holding any office of public trust under the United States.

There are also many prohibitions laid upon the National authority. Several of these have been dealt with already in other places; others will be mentioned in this place.

475. Writ of Habeas Corpus.—In countries where this writ is recognized, a sheriff or other officer, or even a private individual, who has a person in his custody whom he is depriving of his liberty, can be made to show cause why he holds him. The person who is held as a prisoner, or other person in his interest, appeals to a court of competent jurisdiction for a writ of *habeas corpus*, which commands the officer or other person to bring his prisoner into court. If he can show no sufficient cause for holding him, the prisoner is set at liberty. This writ is one of the great bulwarks of personal liberty, and the Constitution provides that the privilege of the writ shall not be suspended unless in time of rebellion or invasion when the public safety requires it.

476. Bills of Attainder and Ex Post Facto Laws.—A bill of attainder is a legislative act that inflicts punishment of some kind upon a person without a judicial trial. An *ex post facto* law is a law that places some punishment upon an act that was not placed upon it when the act was done. Both the State Legislatures and Congress are forbidden to pass any bill of attainder or *ex post facto* law.

A statement of several restrictions that are imposed upon the States or the Union, or both States and Union, may fitly close this work.

477. Titles of Nobility.—These would plainly be out of character and be corrupting in tendency in a republican country. Republicanism assumes the equality of citizens. So it is provided that neither the United States nor any State shall grant any title of nobility. Furthermore, no officer of the United States can, without the consent of Congress, accept any present, office, or title from any king, prince, or foreign state.

478. No National Church.—Congress can pass no law in relation to a state church or establishment of religion, or prohibit the free exercise of religion. All churches and religions are, so far as the National authority is concerned, put on the same level. The separation of Church and State is a fundamental principle of American polity.

479. Freedom of Speech and the Right of Petition.—Congress can pass no law abridging the freedom of speech or of the press, or denying or limiting the right of citizens peaceably to assemble and to petition the Government for a redress of grievances. This provision, however, is no defense of license of speech or printing, such as slander or libel, or of public tumult and disorder.

480. Soldiers in Private Houses.—Tyrannical rulers have often accomplished their purpose of oppression by quartering soldiers in the houses of citizens, to overawe and intimidate them. In the United States soldiers can not be quartered in private houses without the consent of the occupants in time of peace, and not in time of war save in a manner that is prescribed by law.

481. The Militia.—Tyrannical governments have often found it necessary, in order to accomplish their purpose, to suppress the citizen soldiery, or to deny the people the right to keep and to bear arms. Our Constitution provides that, since a well regulated militia is necessary to the security of every state, the right of the people to keep and bear arms shall not be infringed.

482. Searches and Seizures.—Oppressive rulers have often, or generally, held themselves at perfect liberty to search the papers and persons of citizens or subjects, in order to find evidence for criminating them or for establishing their own tyranny the more thoroughly. Our Constitution provides that the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated. Warrants for the purpose of making such seizures shall not be issued by magistrates unless there is probable cause for issuing them, which must be sworn to by the complainant; and even then they must particularly describe the place to be searched and the persons and things to be seized.

TOPICAL REVIEW OF THE NATIONAL GOVERNMENT.

I. Colonial Governments consisted of

(1) An Assembly,
(2) A Council,
(3) A Governor, and
(4) Courts of Law.

2. The Assembly was chosen by the people.
3. The Council, Governor, and Judges were appointed in various ways.
4. The Colonists possessed the rights of English subjects.
5. Parliament had power to nullify any law passed by the Colonies.
6. The Colonies owed a double allegiance: they were subject—
   (1) To their own laws, and
   (2) To those of Great Britain.
7. The Crown and Parliament had supremacy in national affairs.
8. The Colonial Governments were supreme in local affairs.
9. The attempt of Parliament to tax the Colonies precipitated the conflict which ended in independence.

II. Political Effects of Independence.

1. The Colonies became free and independent States.
2. The Union that had existed through Great Britain now existed through Congress.
3. The powers of Congress were defined by the Articles of Confederation.
4. Their inadequacies were supplied by the Constitution.
5. How the Constitution was framed.
6. How it was ratified.
7. The views of its friends and its enemies.
8. How the government was inaugurated.
9. How amendments may be proposed and ratified.
10. The amendments enumerated and characterized.
11. The preamble an enacting clause.
12. The preamble involves five things: *a*. The people enact it. *b*. It establishes a more perfect union. *c*. It establishes a constitutional government. *d*. It creates a federal state. *e*. The people delegate some powers and reserve others.
13. The provisions of the Constitution are embodied in VII. articles.

III. How Powers are Distributed.

1. A Legislative Department makes the laws. The President may veto and the Supreme Court annul them.
2. An Executive Department enforces and administers the laws. Congress may impeach.
3. A Judicial Department interprets and applies. The Legislative Department may impeach and the President and the Senate appoint or remove.

IV. The Legislative Department.

1. It is bicameral — two-chambered.
2. How the House is elected.
3. Qualifications of Representatives and Senators.
4. The qualifications of electors.
5. How Senators are elected: the four steps.
6. How vacancies are filled.
7. Classes of Senators.
8. Who may vote for Representatives.
9. How Representatives are apportioned.
10. The decennial census.
11. Method of apportionment.
12. Changes in the law: 1842, 1872, 1873.
13. Compensation of national legislators.
14. Privileges of members of Congress.
15. Prohibition affecting members of Congress.
16. Length of each Congress.
17. Times of meeting.
18. Officers of the Senate.
19. Officers of the House of Representatives.
20. Each House the judge of the rights, qualifications, etc., of its members.
21. Quorums to transact business.
22. Rules governing proceedings.
23. Power to punish its own members.
24. Journals and voting.
25. Mode of Legislating.
26. Action of the President.
27. Orders, resolutions.
28. The Committee system.
29. Adjournments.

V. Impeachments.

1. Any Civil Officer may be impeached.
2. The House impeaches.
3. The Senate tries impeachments.
4. How the trial is conducted.
5. The limit of punishment on conviction.
6. Summary of impeachments.

VI. Powers of Congress.

1. Taxation.
2. Special Rules.
3. Taxes: direct and indirect.

4. Borrowing money—Bonds and Treasury Notes.
5. Commerce.
6. Naturalization.
7. Bankruptcies.
8. Coinage.
9. History of the silver dollar.
10. Fineness, weight, and ratio of value of gold and silver.
11. Gold and silver certificates.
12. Counterfeiting.
13. The Independent Treasury.
14. National Banks.
15. Weights and Mesaures.
16. The postal service.
17. Rates of postage.
18. Copyrights and patent rights.
19. Piraces and felonies.
20. Power to declare war.
21. Federal district.
22. Power to make necessary laws.

VII. Powers of the Executive.

1. The executive power efficient.
2. How the President and V.-P. are elected.
3. How nominated.
4. Electoral ticket.
5. How electors are chosen.
6. How electors vote.
7. How their votes are counted.
8. When electors fail to elect, the House elects Pres. and Senate V.-P.
9. History of the electoral law.
10. Remarks on the System.
11. Qualifications, term, and salary.
12. Oath of office.
13. Duties of Vice-President,
14. The Presidential succession.
15. Commander-in-chief.
16. Power to pardon, except in impeachment cases.
17. Makes treaties by aid of Senate.
18. How treaties are made.
19. Appointive power.
20. The President nominates: the Senate confirms.
21. Public ministers.
22. Recognition of countries by receiving ministers.
23. The duties of consuls.
24. Military and naval officers appointed and removed.
25. The President's power of removal.
26. How vacancies are filled.
27. The civil service.
28. Civil service reform.
29. The President's messages.
30. Power to call special sessions of each or both Houses.

VIII. Executive Departments.

1. Department of State.
2. Department of the Treasury.
3. Department of War.
4. Department of Justice.
5. Post-office Department.
6. Department of the Navy,
7. Department of the Interior.
8. Department of Agriculture.
9. The Constitution and functions of the Cabinet.

IX. The Judicial Department.

1. Its functions and powers defined.
2. Where the power is vested.
3. The different kinds of courts.
4. The extent of the judicial power.
5. Original, concurrent, and appellate jurisdiction.
6. The number of District Courts.
7. The Circuit Courts.
8. The Circuit Courts of Appeals.
9. The Court of Claims.
10. Courts of the Federal District and Territories.
11. The Supreme Court.
12. How the judges are appointed.
13. The compensation of judges.
14. The concurrent jurisdiction of National and State courts.
15. Appeals from State courts.
16. Rules regulating trials.
17. Military courts.
18. Treason and its punishment.

X. New States and the Public Domain.

1. The origin of the public domain.
2. Annexation of territory.
3. Provisions for new States.
4. Territories of the United States.
5. The government of an organized Territory.
6. How new States are admitted.
7. Indian Territory.
8. How the public lands are surveyed.
9. School lands.
10. The new States admitted.

XI. Relation of the States to the Union.

1. The sphere of a State.
2. The sphere of the Nation.
3. The State and the Union.
4. National functions of the States.
5. Prohibitions laid on the States.
6. Mutual duties of States.
7. Privileges and immunities of citizens.
8. A Republican form of government guaranteed.
9. Invasion and domestic violence.
10. National authority and public peace.
11. The supremacy of the Union.
12. The writ of habeas corpus.
13. Bills of attainder and ex post facto laws.
14. No titles of nobility conferred — none to be accepted by public officers.
15. No national church.
16. Soldiers not to be quartered on citizens.
17. The militia.
18. Searches and seizures.

GENERAL OUTLINE.

HISTORY OF IOWA

The Numbers refer to the paragraphs.

I. The Beginnings of Government (1673-1838).
   1. Meaning of the Name Iowa.
   2. History of the Use of the Name.
   3. Early Explorations.
   4. The Expedition of Captains Lewis and Clarke.
   5. The Expedition of Major Pike.
   6. The Title to the Soil.
   7. The First White Settler.
   8. Miner of the Mines of Spain.
   9. Other Early White Settlers.

II. The Original Inhabitants.
   10. The Indians.
   11. The Government and the Indians.
   12. Treaties with the Indians.
   13. The Half-Breed Tract.
   14. Legal Efforts Regarding Titles.
   15. Final Settlement of the Case.

III. Iowa Territory (1838-1840).
   16. The Organic Act.
   17. The Power of the Governor.
   18. The Judicial Power.
   19. The First Governor.
   20. The First Legislature.
   21. Controversy with the Governor.
   22. Opinion of the Legislature.
   23. The Appeal to Higher Power.
   24. The Second Legislature.
   25. The Boundary Dispute with Missouri.
   26. The Position Taken by Iowa.
   27. A Change in Administration.
   28. The Seat of Government Moved.
   29. "The Land Claim Laws."
   30. Organization of the Settlers.

IV. The Steps to Statehood.
   31. The Recommendation of the Governor.
   32. The First Constitutional Convention.
   33. The Iowa Boundary Question.
   34. The Act of Congress.
   35. The View of the People.
   36. The Second Attempt.
   37. Other Constitutional Questions.
   38. The Opposition to Banks and Corporations.
   39. The Second Constitutional Convention.
   40. The Result of the Work.
   41. The Hard Times.

V. The Democratic Period of State Control, (1846-1854).
   42. The First Steps.
   43. The Importance of the First State Election.
   44. The First Deadlock.
   45. The Balance of Power.
   46. The First Legislative Investigation.
   47. The Financial Condition.
   48. The Temperance Movement.
   49. School Legislation.

50. The First Special Session.
51. Railroad Agitation and its Effect.
52. The Election of 1848.
53. The Mormon Vote.
54. The Second General Assembly.

VI. The Transition Period in Organization and Legislation (1854-1857).
55. A Period of Organization.
56. The Economical Management of These Times.
57. The Spirit of Speculation.
58. The State University of Iowa.
59. School Legislation.
60. The Hungarians in Iowa.
61. The Great Seals of Iowa.

VII. The Republican Period of State Control, (1857-1896).
62. The Change in State Policy.
63. Other Things that Hastened the Change.
64. The Third Constitutional Convention.
65. Railroad Legislation.
66. Effect of the New Policy.
67. The First Land Grants.
68. The Des Moines River Land Grant.
69. What the United States did for Iowa.
70. Founding State Institutions.
71. The State Banking System.
72. Temperance Legislation.

VIII. Iowa in the Days of Controversy and War (1859-1865).
73. The Slavery Question.
74. Controversies over Suffrage.
75. The Republican Party Supreme.
76. The Campaign of 1860.
77. The Meeting of the Crisis.
78. The Effect of the War.
79. Iowa in the War of the Rebellion.
80. The Sioux Indian and the Settler.
81. The Spirit Lake Massacre.
82. The Outrages Committed.
83. The Monument.

IX. The State Institutions and Societies.
84. The Policy of the State.
85. The Penitentiaries.
86. The Soldiers' Home.
87. The Hospitals for the Insane.
88. The Hospital for Inebriates.
89. The College for the Blind.
90. The School for the Deaf.
91. The Industrial Schools.
92. The Institution for the Feebleminded.
93. The Soldiers' Orphans' Home.
94. The State Agricultural College.
95. The State University.
96. The State Normal School.
97. The State Library.
98. The State Geological Surveys.
99. The Boards of Control.
    (1) Board of Dental Examiners.
    (2) Board of Health.
    (3) Commissioners of Pharmacy.
    (4) Law Examiners.
100. Educational Board of Examiners.
101. The State Societies.
    (1) Agricultural.
    (2) Historical Society.
    (3) The Horticultural Society.
    (4) The Iowa State Teachers' Association.
    (5) The Iowa Academy of Sciences.

X. Growth, Development and Change.
102. The Rate of Progress.
103. Growth in Population.
104. The Early Modes of Travel.
105. Urban Population.
106. The First Effects of the Railway.
107. Railway Building.
108. State Control of Railways.
109. Iowa's Capitals.

110. The Policy of the State as to Debt.
111. The Policy of the State as to Public Institutions.
112. Political Changes.
113. Productions.
114. Mining.
115. Live Stock and Dairy Products.
116. Public Education.
117. The First School Provisions.
118. The Constitutional Provisions.
119. Early Method of Support of Schools.
120. The Public School Strengthened.
121. The State Board of Education.
122. Horace Mann and Iowa.
123. Education, not Supported by Public Taxation.
124. Other Educational Influences.
125. The State Board of Control.

CIVIL GOVERNMENT

XI. Local Government.
126. The Formation of the American Union.
127. The Constitution.
128. The Reserved Rights of the States.
129. The State Divided into Counties and Townships.
130. The Congressional Township.
131. The Plan of the Survey.
132. The Division of the Township into Sections.
133. The School Township.
XII. Township Government.
134. The Civil Township.
135. Officers of the Civil Township.
136. Bonds.
137. Remuneration.
138. Township Elections.
139. Duties of Township Trustees.
140. Classification of Trustees.
141. The Township Clerk.
142. Superintendents of Roads.
143. Constables and Justices of the Peace.
144. Assessor.
145. Militia.
XIII. Municipalities.
146. Classification.
147. The (Incorporated) Town.
148. The Officers of an Incorporated Town.
149. The Council and their Duties.
150. Cities of the Second Class.
151. Ordinances and Wards.
152. Number of Cities of the Second Class.
153. Cities of the First Class.
154. Number.
XIV. County Government.
155. County Government.
156. Two County Seats.
157. The County Officers.
158. The Board of Supervisors.
159. The Duties of the County Supervisors.
160. The Public Buildings.
161. The County Auditor.
162. The County Treasurer.
163. The County Attorney.
164. The County Recorder.
165. Buying Real Estate.
166. The County Clerk.
167. Other Duties of the County Clerk.
168. The Sheriff.
169. The Coroner.
170. Notaries Public.
171. The County Superintendent
XV. State Government.
172. The Constitution.
173. The Preamble.

174. The Bill of Rights.
175. Political Power Inherent in the People.
176. No State Religion.
177. Religious Tests.
178. The Penalty for Dueling.
179. Uniform Action of Laws.
180. Freedom of Speech and Press.
181. Security from Arrest and Search.
182. Trial by Jury.
183. Rights of the Accused.
184. Indictment by the Grand Jury.
185. Second Trial—Bail.
186. Habeas Corpus.
187. Definition and Illustration.
188. Relation of Military to Civil Power.
189. Forced Hospitality to Soldiers.
190. Treason.
191. Injustice and Cruelty to Prisoners.
192. Eminent Domain.
193. Imprisonment for Debt.
194. Right of Assembly and Petition.
195. Attainder, Ex Post Facto, Etc.
196. Ex Post Facto Laws.
197. Impairing Obligation of Contracts.
198. Rights of Foreigners.
199. Slavery.
200. Lease of Lands.
201. Reservation of Rights.
202. Prohibitory Amendment.

XVI Article II.—Right of Suffrage.

203. Qualifications.
204. Privilege from Arrest.
205. Privilege from Military Duty.
206. Residence of Soldiers and Marines.
207. Disqualifications for Elective Franchise.
208. Parole of Prisoners.
209. Elections.
210. Registration.
211. The Ballot.
212. The Australian Ballot.
213. The Belgian Ballot.
214. Method of Voting.
215. Election Boards.
216. Election Returns.

XVII. Article III.,—Legislative Department.

217. Distribution of Power.
218. Legislative Department.
219. Regular and Special Sessions.
220. House of Representatives.
221. Qualifications of Representatives.
222. Senators.
223. Powers and Duties Belonging to Both Houses.
224. Rights of Individuals.
225. Freedom of Speech.
226. Vacancies.
227. Publicity of Sessions.
228. Adjournment.
229. Bills—Their Origin.
230. Their Passage.
231. How Bills Fail to Become Laws.
232. Report of Finances.

XVIII. Legislative Department (*Continued*).

233. Impeachment.
234. Parties Liable.-Punishment.
235. Accepting Appointments.
236. Disqualification.
237. Holders of Public Money.
238. Payment of Public Money.
239. Compensation of Members.
240. When Laws Go into Effect.
241. Prohibitions.
242. Subject Matter.
243. Local and Special Laws.
244. Extra Compensation—Private Appropriations.
245. The Oath of Office.
246. The State Census.
247. Number and Apportionment of Senators.
248. Number of Representatives.
249. Apportionment of Representatives.
250. Floating Districts.
251. Contiguous Territory.

252. Mode of Voting in Elections in the General Assembly.

XIX. Article IV.—Executive Department.

253. The Governor — Election, Term, Canvass of Vote.
254 Vote Required to Elect.
255. Contested Elections and Eligibility.
256. Command of Militia.
257. Duties of Governor.
258. Succession of the Executive, Etc.
259. The Great Seal.
260. Executive Council.
261. The Secretary of State.
262. The Auditor of State.
263. The Treasurer of State.
264. The Attorney-General.
265. Railroad Commissioners.
266. The Superintendent of Public Instruction.
267. Outline.

XX. Article V.—Judicial Department.

268. General Provision.
269. The Supreme Court.
270. Writs and Processes.
271. The District Court.
272. Civil and Criminal Cases.
273. Style of Process, Salary, Etc.
274 Changes in Districts and Judges.
275. Judges and Attorneys.
276. The Grand Jury.
277. The Petit Jury.
278. Outline Study of Judicial System.
279. Militia.
280. Officers.
281. Outline Study of the Militia.

XXI. State Debts and Corporations.

282. Purpose and Limits.
283. First Exception to Limit.
284. Second Exception to Limit
285. Third Exception.
286. Requirement.
287. Outline Study of State Debts.
288. Corporations.
289. Prohibition.
290. Bank Legislation.
291. Provision for a State Bank.
292. Responsibility of Stockholders.
293. Further Protective Measures.
294. Outline Study of Corporations.

XXII. Article IX.—Education and School Lands.

295. State Board of Education.
296. School Funds and School Lands.
297. United States Land Grants.
298. Other Sources of School Fund.
299. Care and Disposal of Funds.
300. Agents and Distribution.
301. Outline Study of Land Grants.
302. Amendments to the Constitution.
303. Revision.
304. Outline Study of Amendments.
305. Miscellaneous.
306 Size of New Counties.
307. Debt Limits of Political Corporations.
308. State Boundaries.
309. Oath of Office.
310. Vacancies.
311 Schedule.

INDEX.

HISTORY AND CIVIL GOVERNMENT OF IOWA.

Figures refer to paragraphs, not pages.

A.

Academy of Sciences, 101.
Accused, rights of, 183.
Admission of Iowa, 31, 32, 128.
Adjournment, 223, 228.
Adjourned Session, 50.
Agricultural College, 94, 297: Society, 101.
Amendments. 280, 302, 303.
Anamosa, 10.
Andrew, 58.
Appanoose, 10.
Appointed officers, 266.
Appointments, 235.
Apportionment, 247, 249.
Appropriations, 244.
Arkansas, 6.
Arrest, 181, 204, 224.
Assembly and petition, 194.
Assessors, 144.
Attainder, 195.
Attorney, 64, 163, 264.
Auditor, 153, 161, 262.

B.

Banks, 37, 38, 40, 55, 62, 63, 64, 71.
Banking laws, 290, 291-293.
Ballot, secret, 211.
  Australian, 212.
  Belgian, 213.
Battles of Rebellion, 79.
Belmont, 109.
Bill of rights, 174.
Bills, origin of, 229.
  passage, 230-231.
Black Hawk, 10.
  map of county, 158.
  purchase, 12.
Blondeau, 7.
Blind, 88, 89.
Boards of State, 99, 100.
  of education, 64, 121.
Bonaparte, Napoleon, 6.
Bonds, 136.
Boundaries, 308.
  disputes concerning, 25, 33, 34, 35, 39, 40.
Briggs, Ansel, 43, 50.
Brigham, David, 14.
Brown, Auditor, 244.
Buildings, public, 160.
Burlington, 14, 19, 28, 109.

C.

Capital, 19, 109, 310.
Capitol, 20.
Canvassing Board, 159.
Caucus, 216.
Cass, Lewis, 52.
Census, 19, 24, 61, 64, 246.
Chambers, John, 12, 27, 28.
Changes in District Courts, 274.
Charters, 20.
Cherokee, 10.
Chickasaw, 10.
Civil and criminal cases, 272.
Circuit courts, 167, 274.
Clark, James, 42.
Clerk, 141, 148, 150, 153, 166.
Classification, 140, 146.
Codes of Iowa, 50.
Colleges, 123.
College for Blind, 89.
Compensation, 137, 239, 244.
Congress, 23, 24, 25, 32, 34, 35, 40, 42, 50, 51, 52, 65.
Congressional Districts, 173.
  townships, 130-133.
Constitution, 127, 172, 303.
  of 1844, 32, 38, 39.
  of 1846, 38, 40, 42, 45.
  of 1857, 38, 64, 174.
Constitutionality, 128.
Constable, 143.
Constitutional convention, 24, 31, 32, 39, 64.
Contiguous territory, 251.
Contracts, 197.
Conventions, 216 (3).
Coroner, 169.
Corporation laws, 37, 38, 40, 55, 62, 64, 66.
Corporations, 282, 288-290.
Council, 149, 150, 153.
  Bluffs, 4, 51, 53.
County government, 155-171.
County officers, 157.

County seat, changing, 243.
two seats, 156.
County, size of, 306.
Courts, circuit, 167, 274.
district, 271.
justice, 143, 305.
supreme, 9, 64, 269.

D.

Dakota, 6.
Davenport, 12, 20, 51, 93, 120.
"Deadlock," 44, 46, 52.
Deaf, school for, 90.
Debts, 282-285, 307.
Decatur County, 60.
Decorah, 10.
Democratic view, 35, 43, 50, 53, 62, 63, 74, 112.
Dennison, George B., 59.
Dental examiners, 99.
Departments, 217.
Des Moines, 64, 109.
Navigation Company, 68.
river land grant, 68, 69.
Valley Railroad, 68,
District attorneys, 64.
District of Louisiana, 6.
District court, 271.
Disqualifications, 207, 236-238.
Divorce. 241.
Dodge, A. C., 45, 54, 70, 75.
Henry, 109.
Dubuque, City, 38, 51, 58, 120.
Julien, 7.
Dueling, 178.
Duties, of local officers, 139.
of State officers, 256-266.

E.

Education, 116.
State Board of, 295
Educational Board of Examiners, 100.
Elections, 138, 139, 209.
in General Assembly, 252.
Election boards, 215.
returns of, 149, 216.
Emancipation proclamation, 78.
Eminent domain, 192.
Entering land, 29, 30, 41.
Executive council, 260.
Exemptions, 205.
Ex-post facto laws, 195, 196.
Extra sessions, 50.

F.

Fairfield, 58.
Federal government, 127.
Feeble-minded, 92.
Felonies, 184.
Finance, County, 159.
Reports, of State, 141, 232.
Financial affairs, 47, 55, 62, 63.
First State election, 43.
schools, 117.
Floating districts, 250,
Floyd, Sergeant, 4.
Foreigners, rights of, 198.
Fort, Crawford, 7.
Dodge, 82.
Madison, 12, 20.
Sumpter, 76.
Fox Indians, 1, 7, 10, 12, 13.
Freedom of speech, 180.
Free schools, 59.
France and Iowa, 6.

G.

General Assembly, 50, 54, 218.
Geological survey, 98.
Girard, Basil, 9.
tract, 9.
Good time, 208.
Governor, 17, 21, 22, 253-259.
list of, 266.
Graded schools, 59.
Grand jury, 184, 276, 277.
Grand river, 60.
Great Britain, 6.
Great seals of Iowa, 61.
Grimes, James W., 59, 62, 63, 64, 73, 75, 119.

H.

Habeas corpus, 186.
Half-breed tract, 13, 14, 15, 44, 45
Hall, J. C , 45.
Harlan, James, 75.
Hard times, 41, 55.
Harrison, William Henry, 12, 27, 46.
Health, board of, 99, 139, 150.
Hennepin, Louis, 3.
Highways, 159.
Historical department, 97.
society, 97, 101.
Home rule, 24.
Home for blind, 88.
Honore-Tesson, Louis, 9.
Horticultural society, 101.
Hospitals for insane, 70, 87.
Hospitality to soldiers, 189
Hungarians, 60.

I.

Illinois, 3, 53.
Impaired obligations, 197.
Impeachment, 233, 234.
Imprisonment for debt, 193.
Inalienable rights, 174.
Income tax, 128.
Indebtedness of State, 47, 64, 70, 77. 110.
Independent districts, 133.
Indiana, 6.
Indian boundary line, 25, 33.
Indians, 1, 10, 80, 81, 82, 83.
Indian treaty, 11, 12.
Indian war, 80, 81, 82, 83.
Industrial school, 91.
Ink-pa-du-tas, 81.
Insane, 87, 207.
Institutions, State, 70, 84, 111.
Interest, rate, 41.

Iowa, admitted. 32-40.
City, 1, 20, 28, 39, 51, 58, 64, 109
County, 1, 2.
district, 2.
name. 1.
river, 1.
soil, 6.
territory, 2, 16.

J.

Jefferson, Thomas, 12.
Johnson County, 20.
Johnston, Edward, 14.
Joliet, Louis, 3, 6.
Jones, Geo. W., 54, 75.
Judicial power, 18, 268-278.
table, 269.
Jury, 182-183.
Justice of the peace, 143, 305.

K.

Kanesville, 53,
Kentucky, 12.
Keokuk, 10, 12, 13, 51.
King, Nelson, 45.
Kirkwood, S. J., 70, 77.
Kossuth, Louis, 60.

L.

Land-claim laws, 29, 30.
Land grants, 67, 69, 297-301.
sales, 29, 30, 51, 57.
La Salle, 3.
Laws, 240.
Lease of lands, 200.
Le Claire, Antoine, 1, 65.
Lee County, 3, 9, 13.
Legislative department, 218.
assembly, 22, 24.
investigation, 46.
Legislature, 20, 24, 218.
Library, 124.
state 97.
Lieutenant governor, 64, 258
Lincoln, Abraham, 73, 76.
Live stock, 115.
Loan, public, 47.
Local and special laws, 243.
Lotteries, 241.
Louisiana, 5, 6.
Lucas, Robert, 19, 22, 23, 26, 27, 28, 31.

M.

Madison, 109.
Mahaska, 10.
Mann, Horace, 122.
Marquette, James, 3, 5.
Massacre, Indian, 82.
Mendota, 82.
McCarthy, Johnathan, 45.
Michigan, 2, 6.
Militia, 145, 279-280.
Miner's Bank, 38.
"Mines of Spain," 8.
Mining, 114.
Minnesota, 6.
Misdemeanors, 184.
Mississippi river, 3, 6, 12, 39.
Missouri, 6, 12, 25, 26, 33, 39.
Compromise, 73.
Modes of travel, 104.
Monona, 10.
Montrose, 9.
Monuments, 78, 83.
Mormons, 53.
Mortgages, 164.
Mt. Pleasant, 58, 70, 87.
Municipalities, 146-154.

N.

Names, changing, 243.
Negro suffrage, 74.
New Orleans, 6, 7.
Nicollet, 33.
Normal Schools, 58, 92, 96.
North Dakota, 6.
Northwest Territory, 12.
Notary public, 170.

O.

Oath of office, 141, 245, 309.
Offenses, 184.
Ohio, 12.
Okoboji, 10, 82.
Ordinance of 1787, 7.
of city, 151.
Organic act, 16.
Orphans' Home, 93.
Osage, 10.
Osceola, 10.
Oskaloosa, 10, 58.
Ottumwa, 10.

P.

Panic of 1837, 41,
Parochial schools, 123.
Pay, 137.
Penitentiary, 20, 85, 194.
People of Iowa, 61, 173.
Petit jury. 277.
Pike, Major, 5.
Pike's Peak. 5.
Pharmacy, 99.
Pocahontas, 10.
Political power, 175.
patronage, 19.
Poll-tax, 139.
Poor, 139, 159.
Population, 56, 61, 103, 105.
Possum ticket, 45.
Potosa, 8.
Pottawattamie Indians, 10, 12.
county, 4.
Poweshiek, 10.
Powers of both houses, 223.
Prairie du Chien, 7.
President of United States, 23.
Preamble, 173.
Prices, 41.
Primaries, 216, (2).
Principal meridian, 131.
Private appropriations, 244.
Proclamations, 226.

Productions, 113.
Progress, 102.
Prohibition amendment, 202.
Prosecuting attorney, 64.
Protest, 224.
Public lands, 51, 297-301, 310.
Publicity of sessions, 227.

Q.

Quorum, 223.

R.

Railroads, 51, 65, 68, 106-108.
Railroad commissioners, 265.
Real estate, buying, 165.
Rebellion, War of, 77-79.
Recorder, 164.
Reform schools, 91.
Registration, 210.
Reid, Hugh, 14.
Religion, 176.
Remuneration, 137, 239.
Representatives, 220, 221, 248.
Republican view, 62, 63, 72, 76, 112.
Reserved rights, 128, 201.
Residence, 206.
Review, boards of, 141, 144, 159.
Rio Grande River, 3, 5.
Road taxes, 139.
Roddick, Thomas, 9.

S.

Sac, 10, 12, 13.
St Clair, Arthur, 12.
St. Louis, 12.
St. Peters River, 33.
Salaries, 56.
of state officers, 266.
Schedule, 311.
Schools, 116-120.
Schoolcraft, Henry R., 1.
School for deaf, 90.
School funds, 133.
School legislation, 49, 59, 117, 118-120.
Scott, Gen. Winfield, 12.
Seals of Iowa, 61.
Second trial, 185.
Secretary of State, 261.
Semi-centennial, 102.
Senators, 222.
number of, 247.
Sessions, extra, 24, 50, 257.
of legislature, 219.
Sheriff, 168.
Sioux, 10, 12.
Indians, 80, 81, 82, 83.
river, 33.
Slavery, 32, 63, 73, 76, 199.
Soldiers, 78, 79.
Home, 86.
Orphans' Home, 93.
South Dakota, 6.
Spain and Iowa, 6.
Spaulding, Josiah, 15.
Special Sessions, 50.
Speculation, 55, 57.
Speech, freedom of, 225.
Spirit Lake, 80-83.
State Agricultural College, 94, 297.
State banks, 37, 71, 290-293.
State Board of Control, 125, 266.
of Education, 64, 295.
State Boards, 99, 100.
State Institutions, 70, 84-96.
State Normal School, 96.
State University, 58, 64, 95, 122, 297.
Supreme law, 127.
Surveyor, 171a.
Surveys, congressional, 130-133.
Subject matter, 242.
Suffrage, 74, 203-216.
Sullivan, John C., 25, 33.
Superintendent, 49, 171, 266.
Supervisors, 142, 159.
Supreme Court, 9, 64, 269-274.

T.

Tama, 10.
Taxes, 144, 286.
Taylor, Zachary, 52.
Teachers' Association, 101.
institutes, 122.
Temperance, 48, 63, 72.
Territorial legislation, 20-24.
Title to soil, 6.
Towns, 147-149.
Treason, 190.
Treasurer, 148, 150, 153, 162, 263.
Treaties with Indians, 11, 12.
Tuition in school, 59.
Tyler, John, 27.

U.

Unconstitutionality, 128.
Uniform action of laws, 179.
United States Senators, 43-46, 50, 54.
University, 58, 64, 95, 122, 297.
Upper Louisiana, 6, 9.

V.

Vacancies in General Assembly, 226.
other, 149, 310.
Van Buren, President, 23.
county, 25.
Veto, 21, 22, 149, 151, 153, 229, 230.
Voting, 214.
in General Assembly, 252.

W.

Wapello, 10.
War of Rebellion, 77, 78, 79.
Warrants, 143, 181.
Washington monument, 76.
Watonwan river, 33.
Waukon, 10.
Whig view, 35, 43, 50, 53.
Wilson, Thomas S., 14.
Winnebago, 10.
Winneshiek, 10.
Wisconsin, 2, 6, 14.
Writs, 143, 270.

Y.

Yea and nay vote, 224.

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